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Jeremy Bentham

An Odyssey of Ideas

1748-1792







National Portrait Gallery, London

Jeremy Bentham

Jeremy Bentham

An Odyssey of Ideas

by

M. P. Mack

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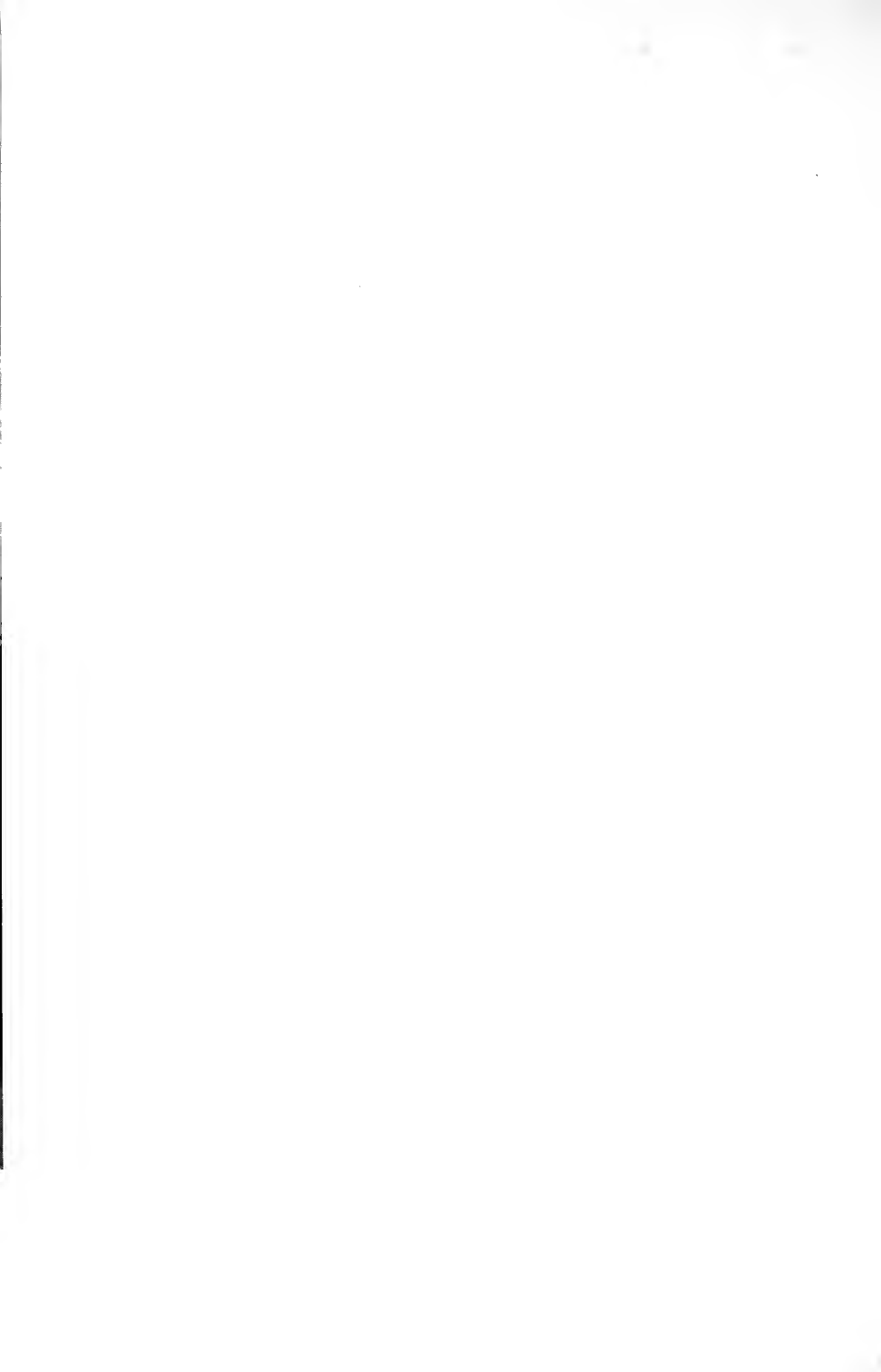
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Preface

This study of Jeremy Bentham began in bewilderment and it ends in hope. Could the usual condescending sketch of him be a full portrait or was it a caricature? Was he a shallow, unoriginal, and slightly comic philistine or a profound and serious creator? Was it possible that so ardent a reforming pragmatist should have sat still with a petrified doctrine while the world around him lurched forward from static, agricultural, aristocratic anarchy to industrial, middle-class, democratic bureaucracy? Can he have died in 1832 placidly cherishing the same ideas he first discovered in 1769, unaffected by the American, French, and Industrial Revolutions? Can a man whose influence on the development of British political and legal history was admittedly so enormous have been so trivial and defective a thinker? Was his attempt to create a science of morals and legislation quixotic or was it viable? Can it be dismissed with a sneer or is it admirable? Was there a gap, then, between his own words and the interpretations of his critics?

There was. With several generous grants from the Social Science Research Council and the American Association of University Women, I was able to study many of Bentham's unpublished manuscripts at the British Museum and University College, London – and stand bemused before his mummy. The more I read among his published and unpublished writings, the wider the gap yawned; the higher my admiration for him rose; and the more determined I became to draw another picture of him. I believe he was a great man who has often been misunderstood and therefore undervalued. This book is an attempt to see him in a new perspective, as the creator of a general method rather than a particular doctrine, of a 'logic of the will' that covers every human action and not merely a limited ethical or political theory.

These are some of the questions it tries to answer. What were the major influences that shaped his ideas and how important

was each of them? What kinds of tension and conflict arose from his family life, religious training, school and university education, independent reading, and long apprenticeship in the courts? What did he accept and what reject? In creating a new science of morals and legislation, what exactly did he set out to do? What were the necessary conditions? What were the structure, axioms, and hypotheses of this new science? What analogies did it have with mathematics, natural and physical science? Did his achievement match his ambition? In what ways did he fail? What changes, if any, did his ideas undergo? In Utilitarianism knowing without doing is worthless; how then did he apply his new science? Whom did he hope to convert? Did he succeed?

In this first of two volumes I trace the evolution of Bentham's thought from his birth in 1748 to 1792, the year his father died and the year before the French declared war on England. Now he had more freedom than he had ever known before – and less. With the small fortune he inherited, he could at last apply his principles and underwrite the social experiments that would vindicate them. At the same time, under the pressures of war freedom of speech became a luxury the English Government quickly discarded, and Bentham prudently kept his more radical opinions to himself. And some of them were radical indeed. By 1790 he had become a full-fledged democrat and parliamentary reformer, as the previously unpublished essays in the appendices show.

As there is a gap between Bentham's words and their interpretation by his critics, so there is a gap between his ambition and his achievement. He sought to explore the whole range of human experience; inevitably his answers were more or less uneven and unsatisfactory, and so will be any account of his enterprise. Perhaps those who are dissatisfied with mine may be led to write a better one. I hope they do.

From the beginning many people have helped me and I am very grateful to them. Above all I should like to offer tributes to the late J. Bartlet Brebner and C. K. Ogden. This book is the fruit of their counsel and encouragement.

I have heavy obligations to librarians; they did heavy work for me. Month after month they hauled dozens of cumbersome boxes of manuscripts, and I should especially like to thank Mr John Scott of University College and his gracious staff; the staff

of the British Museum Rare Manuscript Room; and Mr A. N. L. Munby, librarian of King's College, Cambridge.

I have learned much from the pioneer studies of Professors Charles Warren Everett and David Baumgardt. Professors Robert K. Webb and Peter Gay, Mrs Judith Hubback, Mr Hamish MacGibbon, and Mr Gordon V. Carey kindly read my manuscript and offered many helpful suggestions.

Last but not least I thank the generous hosts who taught me that English cooking is not all brussels sprouts and carrots. On the afternoons when I sat huddled over nearly illegible manuscripts, the prospect of dinner with Miss Hannah Bowman and Mr Robert Neuberger, Dr and Mrs Ernest Koenigsberg, or Mr C. K. Ogden, was a great solace.

M. P. M. 1962



Introduction:

Caricatures and Portraits

'Non ridere, non lugere, neque detestari, sed intelligere.'
'Smile not, lament not, nor condemn; but understand.'

SPINOZA

The story of Jeremy Bentham is a chronicle of ironies. He deplored ill-grounded 'fictions' all his life and they have haunted his memory. These he defined as falsehoods or claims that non-realities exist. Even while he lived he was condemned for attitudes he never held and statements he never made. After his death in 1832 fictions spread around him and his doctrines and they have been multiplying ever since.

In Bentham's vocabulary, all words that are not concrete or proper names are fictions. We must use them continually and inescapably or give up talking altogether. The first and fundamental fictitious entities are time, space, and matter. We speak of things as at rest in a certain place at a certain time, but the world is made up of particles in everlasting motion. Bentham distinguished between many kinds of fiction: first, second, and third order, according to their distance from concrete referents; the neutral ones of the logician, indispensable for linguistic analysis; and the emotionally charged ones of the poet, priest, and lawyer.¹ Politicians manipulate language as an instrument of power, and poets use it to amuse us or stir us into action.

Even before the fact, then, Bentham classified his own critics and commentators. For the most part their fictions were second order, neither very near to the truth about him nor entirely remote from it. He has been endlessly misinterpreted but usually for intelligible reasons. His critics use neither the neutral terms of the logician nor the politician's power language but the fictions of the poet. They have drawn hundreds of word-pictures of Bentham and they want to persuade others to see him

as they do. What kind of sketches have they made? Most of them are caricatures.

From that day in June 1818 when Lord Brougham arose in the House of Commons and scorned him as 'having dealt more with books than with men',² down to our era when Lord Keynes denounced the Benthamite tradition as 'the worm which has been gnawing at the insides of modern civilization and is responsible for its present moral decay',³ Bentham and his doctrines have been notorious. He has been attacked with every verbal weapon from sarcasm to kindly correction, from wit to plodding exegeses, from irascible explosions to urbane point-by-point dismissals. Most critics concede that Bentham is 'like the Venus de Milo; all that there is of him is admirable'.⁴ Then they let fire. To Southey, Bentham was a 'metaphysico-critico-politico-patriotico-phoolo-philosopher'.⁵ To Emerson, Utilitarianism was a 'stinking philosophy'.⁶ Nietzsche described it as 'an *impossible* literature' into which 'has crept that old British vice which is called *cant* and which is *moral Tartuffery* only this time hidden under the new form of scientific method'. He concluded his attack with a verse:

Soul of washrag, face of poker,
Overwhelming mediocre,
Sans genie et sans esprit!⁷

So shrewd and usually sympathetic a man as Schumpeter denounced Bentham's 'boisterous and vulgar Utilitarianism' and described it as 'the shallowest of all conceivable philosophies of life'.⁸ Stendhal deplored 'the fashion and cult of the greatest good of the greatest number, after which the nineteenth century has run mad'.⁹ Marx raged against 'the arch-philistine, Jeremy Bentham, the insipid pedantic leather-tongued oracle of the commonplace bourgeois intelligence of the nineteenth century. . . . I should call Mr Jeremy a genius in the way of bourgeois stupidity'.¹⁰ Trotsky read Bentham when he was seventeen and was a passionate convert for a few weeks, but afterwards he referred to Utilitarianism as 'a philosophy of social cookbook recipes'.¹¹

The critical literature is enormous; it is also very repetitive. Here is another irony, for John Stuart Mill drew the false stock picture of Bentham which most people copy. Yet few were in a

better position to give a true one. His father, James Mill, was Bentham's most ardent English disciple. Soon after John was born in 1806 Bentham vowed to care for him should his father die. The Mill family rented a cottage on the master's small estate at Queen Square Place. John was sent to live with Bentham's brother Sam in the south of France. When he returned he formed a discussion group that met regularly in the Queen Square Place drawing-room. In 1825, then only nineteen years old, he edited Bentham's masterpiece, *The Rationale of Judicial Evidence*. It was a brilliant piece of work. Nevertheless, for all their intimacy, Mill was in many ways unsympathetic to Bentham.

His picture of the old sage is very familiar. He saw him as a perennial boy who died in 1832 at the age of eighty-four almost as healthy, inexperienced, egocentric, naïve, lacking in historical sense, impatient of other opinion, unsubtle, and dogmatic as he had been as a child.¹²

The real Bentham, the figure who slowly emerges when he is allowed to speak for himself; when the whole mass of his writings, published and unpublished, in print and out, early and late, is considered and compared; is very different. He was a polymath, a deep and many-sided man who had something significant to say about almost every issue of human interest. His phenomenal mind ranged over the entire area of man and his works – language, psychology, history, ethics, religion, education, politics, and, above all, the law. An exquisitely sensitive boy, he was so tormented by the gloomy Old Testament religion, the arid Latin and Greek formulae, the tortuous chicaneries of the law courts that he was forced to learn, that he dedicated his life to reform. His was one of the most subtle and powerful analytic minds in the history of Western civilization. It was at once his weakness and his strength.

His grand ambition was a panoramic art-and-science of morals and legislation analogous less to Newtonian physics than to the art-and-science of medicine in all its branches – anatomy, physiology, pathology, surgery; curative and preventive. He hoped to create a logic of the will, a monumental and fully articulated structure rising from a foundation of fact, individual pleasures and pains, through ever-ascending orders of generality to the crowning abstraction, the normative Greatest Happiness principle. The propositions of this logic were presented in his codes – of procedure and evidence, civil and penal, international

and constitutional law. This was a dazzling vision and he never once lost sight of it. At the age of eighty-two he was still 'codifying like any dragon'.¹³ He failed; but what gallantry and grandeur lie in the attempt! And how different from those usually assigned are the reasons for his failure.

The language of science is number. But words are the language of morals and legislation, abstractions surcharged with emotive meaning. A physicist has his tools ready-made, but the moral scientist must first forge his own. Bentham knew that a clear and fixed vocabulary was a necessary condition of scientific progress. But when he drew up a new dictionary of moral and political language, he could persuade none of his fellow Englishmen to use it. 'He pipes,' Bentham said, 'but they do not dance – he makes the advances, but they do not follow.'¹⁴ He was far too subtle. Few had the patience to pursue his careful definitions and elaborations, and Bentham's life was an odyssey in search of an audience. So he saw it himself. Sometimes he was Odysseus, sometimes Telemachus, but he was sure his career was an adventurous voyage on unknown seas, crowded with perils, tragedies, and joys.

At first he spoke to British legislators, members of Parliament and officers of the law courts who might have handed down his recommended reforms from the top of the structure of power. When they seemed deaf he turned further afield, to Prussia, Russia, and France. Still he found no effective listeners.* Finally he chose to address the people, hoping that reform might be enforced from the bottom up. It is important to realize that at different times Bentham spoke to different classes of people and that his tacit assumptions about them were also different. When he was young he wrote for an elite, to whom he issued a command for disinterested service like the Hippocratic oath for doctors. He presupposed education and a wide cultural view. Later he addressed the masses and demanded nothing more of them than

* His meeting in 1788 with the Genevan Etienne Dumont (1759–1829), who thereafter dedicated his life to editing, translating, and popularizing Bentham, was an augury of better things to come, but it was well along in the nineteenth century before a Spanish mayor told George Borrow of 'the grand Baintham', 'the most universal genius which the world ever produced – a Solon, a Plato, and a Lope de Vega'. Quoted in Charles Warren Everett, *The Education of Jeremy Bentham* (New York: Columbia University Press, 1931), Introduction, xvi. This wise and entertaining book has been a great help to me.

some understanding of their own interests. This seemed the least common denominator. He wanted to persuade them that their interests were general public interests. It was an impressive shift of focus.

As his audience changed, so did his style and his doctrines. Gradually his thought took two directions, arcane and popular. He kept the one to himself and broadcast the other. His analytic writings were neutral; they became a series of increasingly fine-spun distinctions. His public works were conscious propaganda; they became increasingly violent and polemical. In both ways his thought ceaselessly evolved, not only because a new audience needed a new language but because his restless analytic talent forced him from one subject to another and back again. Where is the mythological man of one idea – the principle of the greatest happiness of the greatest number – and that a fixed one? He was never satisfied and never finished. Sometimes ten or twenty years passed before he returned to an old interest. In the meantime he had seen and learned a great deal. As he went over the same ground he saw that his former classifications were incomplete. Each time he reconsidered the same subject he saw it more deeply and fully than he had seen it before. His later analytic writings were invariably more exhaustive than his earlier.

Bentham was an expanding personality, growing with what he fed on. Like an oyster with a grain of sand, he began with concrete irritants. Almost every day of his adult life, from 1770 to 1832, he wrote about fifteen folio pages. He saw the terrible contrasts between rich and poor, between those with power and those without it, between pious professions of 'liberty' and 'equality' and the cruel facts of everyday life in eighteenth-century England, between legal archaisms and modern urgencies, and he passionately resolved to reduce them. Adam Smith once said, 'There is a great deal of ruin in a nation.' It was Bentham's ambition to expose it and to rebuild on the old foundations. Lord Brougham was wrong. Bentham knew more of men than of books and his mind spun on and on in an untiring effort to help them.

It is true that most of the insights that he later elaborated were at least intimated in his earliest writings. But the story of his thought is a history of changing and intensified foci of attention. When he first considered a subject he skimmed lightly over it, classifying it under his all-embracing 'Encyclopedical Tree' and

simply defining its major terms. Later he probed more deeply. Perhaps the best way to show how his mind worked is to compare his early and late ethical writings. In 1780 he printed *An Introduction to the Principles of Morals and Legislation*. It was neither finished nor was it a book on ethics, but rather the opening chapters of a gigantic survey of the whole field of law. He added the first pages of ethical definitions in obedience to the eighteenth-century literary convention which demanded that general or serious books begin with moral observations. It is ironic that his reputation rests on these rough chapters, hurriedly assembled and offered merely as an introduction to an introduction. He was anxious to get on with his full classification of offences and punishments and did not stop to consider the full ethical implications of his Utilitarian principles.

In 1814 he did. For the first time his ethical thought took the two directions – arcane and popular – that his legal and political writings had followed since 1782. He now distinguished more carefully between morals and ethics, between rules of personal behaviour and pure analysis. His *Deontology* was a moral work, a kind of popular primer like Erasmus' *Colloquies*. Bentham offered it as a guide to the ill-educated masses whom he hoped to bring to political power. At the same time he began an analytic work, *A Table of the Springs of Action*, which was a preliminary attempt to go beyond the crude Chapter X, 'Of Motives', in *The Principles of Morals and Legislation*. Once again he produced mere fragments.

As Bentham's ideas changed, so did his personality. He consciously new-modelled himself according to his own hedonist principles and offered himself as a case study in human happiness. He was not, as Mill said, a boy all his life. Reversing the usual course of human development, he was born old and grew young. A serious joyless boy, he became a gay and whimsical old man. A conservative child, he became a radical adult. The opinions he learned from his father were those of a dour hardened cynic who has seen so many irrationalities repeated that he is sceptical about changing them. But the older Bentham grew, the more enthusiastically revolutionary he became; the more he was convinced that multiple social, political and economic improvements were not only necessary but possible.

In 1821 he wrote to Dumont, his most faithful and effective editor, 'Courage! Son of my mind: we are growing young

together. At what pitch of juvenility may we not have arrived twenty years hence.¹⁵ The year before he had written:

I at 72 – am, for one reason or other, gayer than I was at 17. Venerable they call me – every now and then – those who have never seen me. Those who *do* see me would as soon think of calling a kitten venerable. When [John] Quincy Adams had been with me two or three times, I told him I would thaw some of his ice for him, before I had done with him: and so I did.¹⁶

Bentham was a precocious, serious, lonely child who parsed Greek and Latin while others of his age spun tops. His father usually dressed him in plain black cloth in an age of silver lace ruffles and bright satin breeches. Bentham always had an independent income, large enough to support him comfortably without a salaried job, but too small to free him from the sober methodical prudence his father taught him as a child. In 1792, however, he inherited a sizeable fortune. From then on he could afford to be as childlike and whimsical as he chose.

And he did so choose. Although he continued to wear black suits, he now added a broad-brimmed yellow straw hat and embroidered carpet slippers to his costume. He began to invent playful names for common objects. He never went anywhere without 'Dapple', his walking-stick, or 'Dick', his sacred teapot.¹⁷ Though he had always been fond of mice and cats and admitted that 'it was difficult to reconcile the two affections',¹⁸ he now knighted his favourite cat 'Sir John Langborn'. As 'Sir John' grew older and more sedate, he became 'Reverend' and finally 'Reverend Doctor Sir John Langborn'. Bentham's dining-room was named 'the Shop'; the table was raised on a platform surrounded by a sunken walking passage named the 'vibrating ditch' or 'the well'. His work desk was 'the Caroccio'.

He often sang humorous little songs, composed on the spur of the moment, and he revelled in rituals. Daily he took a 'post-prandial circumgyration' and nightly he went to bed in a one-hour ceremony. After he had undressed and tied on a night-cap, his watch was delivered to a secretary, or 'reprobate', who then read aloud to him. Each one of Bentham's amanuenses had to 'swear fealty to a *trinoda necessitas* – the asportation of the window – the transtration of the window, – idem of the trap window'.* Finally he climbed into a sleeping sack of his own design.

* XI, 82. Seemingly Bentham's bedroom had a removable window.

Even when he was ill he was good-humoured. One night when he was about eighty and had not been feeling well, he went to bed convinced he would die in his sleep. The next morning when his secretary awakened him, he said gratefully, 'I am yet living and a living dog is better than a dead lion. A sorry joke to crack . . . if you will find me a better that is crackable I'll crack it.'¹⁹

As Bentham became more gay, even silly, as he grew older, so he became more healthy; and he was sure that many of his earlier 'complaints' had had a purely mental origin. During most of his life he had been ignored and ineffectual, but he was a venerated old man and gloried in his new celebrity. He was the same kind of astonishingly vigorous, methodical, long-lived bachelor philosopher as Kant and Hobbes. If Hobbes played tennis at seventy-five, Bentham played badminton. Leigh Hunt described Bentham's visit to him in prison around 1815, where he was serving a two-year sentence for a libel published in *The Examiner*. The old man, he explained:

found me playing at battledore in which he took a part [and] . . . with his usual eye towards improvement suggested an improvement in the constitution of shuttlecocks. I remember the surprise of the [prison] Governor at his local knowledge and vivacity. 'Why Mister' said he 'his eye is everywhere at once.'²⁰

Bentham even began to look upon his life-long devotion to law reform as a game. In 1819 he asked:

What sacrifice did I make . . . ? None at all. I followed my own taste. Chess I could not play at without a [partner] . . . Codification was a little game I could play at alone. Chess nobody but my partner and I should have found any amusement in. Codification, when I am dead, who can say how many other persons may be the better for.²¹

He also developed a child's sublime egotism. At the end of his life he gave John Bowring, his young executor, all the disconnected scraps of paper on 'deontology' he had been collecting since 1814. They agreed that Bowring should expand them into a full-length posthumous book, and Bentham offered an inscription for it, 'J. B.'s aim to make himself the wisest and most *effectively benevolent* man that ever yet lived. Somebody must have been so: and who else?'²²

When John Stuart Mill was born in 1806 Bentham was

nearly sixty, with all his crotchets well established. Mill knew only the public figure that Bentham assumed – the happy childlike sage – and nothing of his earlier struggles and miseries. But as another wise old child, Picasso, has observed, 'It takes a very long time to become young.' Bentham at last achieved the lightheartedness, the 'gay science' that was for Nietzsche the 'reward of a long, courageous, painstaking, inward seriousness'.²³

Bentham was a complex man of many moods, a study in contrasts. Proud and vastly ambitious, he was yet sincerely humble. Sometimes he dreamed of a great Utilitarian sect. Only half mockingly he wrote to Dumont:

our way will cover the whole earth. We shall for we will, be despots of the moral world: Locke and Helvétius, offering incense to us every morning, both of them on their knees.²⁴

At other times he despaired:

I have done nothing, but I could do something – I am of some value – there are materials in me, if anybody would but find it out. As it is, I am ashamed of an unrecognized existence. I feel like a cat or a dog that is used to be beaten by everybody it meets.²⁵

He was stubbornly independent yet hungry for love and attention; anxious to find a reading public yet unwilling to seek it out; a rebel against many of his father's habits and values yet very much his father's son. His inheritance appeared not only in his own personality but in the doctrines of Utilitarianism as well. He was both radical and conservative, ceaselessly critical of the *status quo* yet immensely aware of the power of habit and tradition. Finally, he was a sloppy precisionist who had a passion for exhaustive analysis yet always left his work unfinished.

For the same reason Mill could say, 'Bentham failed in deriving light from other minds.'²⁶ By the time Mill was born Bentham no longer read many books. His general principles had been settled for decades and he now tried to apply them to immediate problems of government. The kind of information he sought was factual and statistical. Instead of books he read every important newspaper, magazine, pamphlet, and parliamentary report.

On the question of Bentham's heritage the fictions multiply.

Others have claimed the very reverse of Mill, that Bentham was altogether unoriginal: the only light he had, he borrowed from others. He is usually considered an heir of the *philosophes*. He might well be, for few thinkers have been so candidly generous in acknowledging their heritage. There are hundreds of grateful references to Helvétius, Beccaria, Voltaire, Montesquieu, and D'Alembert in Bentham's early manuscripts – and to Bacon, Locke, Hume, and Blackstone as well. He read them all, took what he needed from them, and went his own way. He could say with Montaigne, 'I do not count my borrowings, I weigh them.'²⁷ What great thinker has done otherwise? But to Dicey he was 'in spirit entirely a child of the eighteenth century.'²⁸ Its features – individualism, belief in *laissez faire*, and rationalism – were his as well. But can a 'spirit' of the eighteenth century be identified? The *philosophes* differed enormously among themselves, and Bentham from all of them. Do grand abstractions like individualism, *laissez faire*, and rationalism have fixed meanings? When they are applied to Utilitarianism, they are used as vague terms of abuse.

Certainly Bentham was an individualist – in a sense. It is a complex issue. His views changed here as elsewhere. When he was young his individualism was descriptive. As he rushed from one new interest to another, it was impossible for him to take a general view of them all. For many years he saw government not as an organized structure of power but as King George III, Lord Mansfield sitting on the King's Bench, Burke and Dunning speaking in the House of Commons. He saw particular people doing particular jobs. Later his individualism was prescriptive. He became a sociologist, strongly aware that government shapes the minds and hearts of its citizens through the traditions, laws, and subordinate institutions it sanctions – the schools, churches, and trade guilds. He saw eighteenth-century England as a closed society; he wanted to open it. He tried to persuade people to judge for themselves with their own minds, uncontaminated by the will of political superiors.

Dicey was above all responsible for the individualist fiction. He himself used it in a political sense as opposed to collectivism or state intervention and more or less equivalent to 'that faith in *laissez faire* which was in practice the most potent and vital principle of Benthamite reform'.²⁹ Halévy elaborated on Dicey and found a fatal contradiction in Utilitarianism between

natural and artificial identity of interest.* He thought that Bentham did but could not meaningfully posit both at once. In their sense, however, Bentham was scarcely an individualist at all. He held that no area of public life is sacred. Every act with social consequences must be open to inspection and judgment. There was nothing government might not do if it could show that public interest demanded it. Further, government need not wait for it to occur. A tremendous new field was legitimately open to it, preventive or indirect legislation. Bentham wrote hundreds of highly original and still largely unpublished pages on this subject.

Good work has lately been done to expose the *laissez faire* fiction.³⁰ The rationalist fiction flourishes. Once again Mill is mainly responsible and once again the issue is very complex. When people call Bentham a 'rationalist', they usually mean to condemn his system as over-simplified, mechanistic, and deductive.

In the famous Book VI of *A System of Logic* Mill identified 'the interest-philosophy of the Bentham school' with 'the geometrical, or abstract method' which supposes that a social phenomenon 'results always from only one force, one single property of human nature'.³¹ Here again Mill was wrong. Since he knew only the Bentham on exhibit, he was unaware that he had two systems of thought. He mistook what was published as political propaganda for a comprehensive political theory. Certainly there was nothing subtle about Bentham's *Plan for Parliamentary Reform*. It was written in 1817 to support Sir Francis Burdett's resolution in the House of Commons. Bentham addressed a mass audience and was content to make a few strong points and to hammer at them again and again.

He flatly denied that men are moved only by their 'worldly interests', and he spent a lifetime identifying and labelling the countless motives that drive them on. As he pointed out, in *The Table of the Springs of Action* he had listed 'sixteen different sorts of interests, every one of them capable of acting [as] . . . a sinister interest: sixteen, of which the love of money is but one'.³² In fact Bentham emphasized many of the motives to political action that Mill explicitly said he ignored: the sense of honour,

* This contradiction is the theme of his masterpiece of impeccable scholarship, *The Growth of Philosophic Radicalism* (New York: Augustus M. Kelley, 1949). See especially his 'Conclusion', pp. 479-514.

dignity, the love of power. Moreover, Bentham uniquely understood the political effects of plain laziness, inattention, ignorance, and, above all, class prejudice.

The word 'geometrical' is badly misleading in any discussion of Bentham. It is true that he was as devoted to the 'geometric spirit' as the *philosophes*.^{*} By this, however, they meant analysis in general. They all agreed that for useful discussion wholes must be broken into parts. But they were also empiricists. Bentham never made an analogy between his own science of legislation and geometry. He knew that quantitative description and analysis are characteristic of all science and not of geometry alone. The proper analogies, he thought, were with algebra and medicine. Bentham's system of thought is not geometrical, nor is it viciously deductive or syllogistic. Of course there are deductive elements in it, as there are in all sciences. He tried very hard to find quantitative equivalents and he deduced lesser from larger phenomena.

The results of misunderstanding Bentham's 'rationalism' have been deplorable. Here is Professor Schumpeter:

The essential point to grasp is that Utilitarianism was nothing but another natural-law system. . . . The programme of deriving, by the light of reason, 'laws' about man in society from a very stable and highly simplified human nature fits the Utilitarians not less well than . . . the scholastics.³³

Bentham derived nothing by an *a priori* 'light of reason'. He carefully defined his principles as 'opinions' merely, not laws which are commands. His conclusions were all hypothetical generalizations to be tested in use, and the 'reasons' he gave were always matters of fact.³⁴

Bentham's heritage was far richer than is usually supposed. He was not merely an heir of the *philosophes*. In his theory of language he did as Leibniz had done. He tried to develop a theory of the forms of thought, a '*characteristica universalis*' in which each simple idea would have a single symbol. Above all, however, Bentham was English, speaking to Englishmen about their society. The British empiricist tradition was his and he

^{*} They were much impressed with Pascal's 'Of the Geometric Spirit'. See Ernest Cassirer, *The Philosophy of the Enlightenment* (Princeton: Princeton University Press, 1951), pp. 15ff.

spoke in its terms. So in fact did the *philosophes*. Bentham borrowed much of his epistemology from Locke and Hume. No one had so great an influence on him as Bacon, who gave him his ambition. Bentham wanted to create a *Novum Organum*, a complete science of human behaviour. He even borrowed from his worst enemies because their doctrines were part of the common universe of discourse. Although he fought against Blackstone all his life, he joined him in speaking of government as a trust and took the doctrine of sanctions from him.

The most vital influences on Bentham were not positive at all, but those he reacted against. Nor did they come necessarily from books. The origins of his ethics lay not so much in Helvétius and Beccaria as in the religious training he had suffered as a boy. He never could understand Dr Johnson's gloomy morality. His child's revulsion was at the bottom of his Utilitarianism, hedonism, and contempt for the principle of asceticism and the religious establishment.

His overriding dedication to legal reform was reinforced by reading Blackstone, but it began when as a child he accidentally came upon a prostitute's melodramatic 'memoirs' of a ruinous thirty-year suit. After he left Oxford in 1763 he sat for years as a student in the King's Bench Court and there the horrors he had imagined were confirmed.

His theory of education and his commitment to a *Novum Organum* – a logic of the will – began at Oxford. There he was forced to lie by subscribing to oaths and to re-read the same classics he already knew by heart. There he was taught to consider Aristotelian logic as complete and informative when he sensed that it was not. He began to wonder whether other propositions besides assertive sentences might not usefully be analysed. Why must definitions run in a circle?

His political theory can be traced to Fénelon's *Télémaque*, which he read when he was seven. There he discovered the ideal of 'justice' and vowed never to lose sight of it. His political ideas, however, developed more slowly than any other part of his thought. For many years he remained the staunch Tory his father taught him to be because he had little direct experience with either the administrative or legislative divisions of the British mixed monarchy. He supposed that ignorance was the great failing of government officials, and that when they learned from him what enormities abounded in the judicial branch,

they would root them out. Gradually he learned that abuses and archaisms were rife everywhere in government and not in the courts alone. He saw, too, that those in power had a vested interest in the system that put them there and were as little anxious to reform one part of it as another.

This was all the more difficult for Bentham to accept as he had only to look around him to see reform thriving. He was born in Hogarth's London in 1748 and died in Sir Robert Peel's London in 1832. During these eighty-four years the city changed from a stinking, filthy, unpaved, dark, and dangerous wen into probably the richest, cleanest, best lit, best paved, and most orderly city in the world. When he was born there was one bridge over the Thames; by 1832 there were eight bridges. During these years literally hundreds of schools, hospitals, and almshouses were established. It was a new humanitarian age and a new industrial age. In 1748 there were no steam engines, no spinning jennies, no mules. A traveller went only fifty or sixty miles a day in a creaking carriage without springs over muddy, dusty, or rutted roads. By 1832 he probably had ridden in one of the new railway carriages (or 'self-moving receptacles' as Bentham called them)³⁵ which could speed him sixty miles in two hours. Sydney Smith recalled that when he was a young man during the last years of the eighteenth century:

Gas was unknown: I groped about the streets of London . . . exposed to every species of depredation and insult. . . . In going from Taunton to Bath, I suffered between 10,000 and 12,000 severe contusions, before stone-breaking Macadam was born. . . . I had no umbrella! . . . There were no waterproof hats, and *my* hat has often been reduced by rains into its primitive pulp.

I could not keep my small-clothes in their proper places, for braces were unknown. . . . If I was bilious, there was no calomel. If I was attacked by ague, there was no quinine. There were filthy coffee houses instead of elegant clubs . . . and . . . even in the best society one-third of the gentlemen at least were always drunk.³⁶

These vast and rapid changes filled Bentham with hope and set the pattern for the development of his thought. He was one of the rare people who are not left behind by the march of events. When new facts arose, he met them and changed his ideas accordingly. This was another reason why he grew younger as he aged: he rejoiced in the multiplying technological and social

improvements he saw everywhere. Everywhere, that is, but in government.

Amidst all this, Bentham saw himself as a man of action immediately involved in the day-to-day crises of a revolutionary society. He was indignant at Lord Brougham's charge that he knew more of books than of men.

No man ever copied so little from books: no man ever drew so much from observations made on men. He [Bentham often spoke of himself in the third person] had not much acquaintance with Drawing-rooms: none with levées. But he has had some with Cottages and much with offices. He has been in the secrets of Ministers: and from 1783 to the present there has not been a Ministry with which he has not been in relation nor from which he has not received marks of confidence.³⁷

Certainly he was directly at the hub of events. From 1766 to 1792 he lived at Lincoln's Inn. From 1792 until his death he lived in a charming little house surrounded by a large walled garden in Queen Square Place (now Queen Anne's Gate, off Birdcage Walk), located at the mid-point of a triangle made by Buckingham Palace, Whitehall, and Parliament.* He subscribed to all the important journals. When Benjamin Franklin testified before a Committee of the Whole House on the effects of the Stamp Act in 1766, Bentham was there; and at the second Wilkes trial in 1768 as well. During the Gordon Riots in 1780 he was on militia duty in the streets. The Prime Minister, the Earl of Shelburne, was an intimate during negotiations for the American peace treaty in 1782-83. During the French Revolution he was consulted by the Abbé Morellet and Mirabeau. He considered himself a kind of minister without office, informed about every political and social issue and ever ready with plans to promote the public welfare.

Bentham's growth from man to boy, from orthodox conservative to unconventional radical, was not entirely smooth and uninterrupted. He had a rare talent for keeping quiet until he knew what he was talking about, for reserving judgment until he had factual evidence to support it. He could calmly stay in a 'state of self-conscious and quiet ignorance' about any question upon which he 'had no particular motive for bestowing a thorough examination'.³⁸ He ordered his mind so 'as to be able

* Actually, George III lived in St James's Palace, directly across the Park from Bentham. See map.

to stop at any point between perfect conviction and absolute doubt, according to the apparent force of evidence in each case as it presents itself at the time'.³⁹ And so, although he was interested in almost everything that does or might occur in the universe, he waited for information before giving an opinion. His intellectual history is spotted with dropped causes, subjects put aside because he felt too ignorant about them to venture a judgment. He took his cues from current events. Soon after meeting Lord Shelburne in 1781 he began to write about foreign policy and international and constitutional law. While visiting his brother in Russia in 1787, he heard a rumour that the British Government planned to set the legal rate of interest at a new level. Bentham's answer was the famous *Defence of Usury*, exposing the folly of a fixed rate. When Pitt contemplated a Russian War in 1789, Bentham attacked with his *Anti-Machiavel Letters*; when rates fixed by the antiquated Elizabethan Poor Laws proved inadequate to provide for the sudden increase in paupers in the 1790s, Bentham wrote two thousand pages on the problem.

Even before the French Estates General met in 1789 he was an eager partisan, busily planning its organization, and he continued to pour out charts, proposals, and amendments for everything the delegates did or might do until the Reign of Terror dried up his enthusiasm. When the French declared war, the British Government faced a grave economic emergency. Without a pause, Bentham now as zealously devoted himself to English problems as he had formerly to French. He wrote thousands of pages not only on the Poor Laws but on taxation, price maximums, free trade, the balance of trade, and the effects of paper money.⁴⁰ When a House of Commons Committee met in 1808 to consider reform of Scottish law, the members invited him to give his opinions. He gladly did.

Bentham returned to the same subjects again and again, each time with more information, more sympathetic understanding, a stronger determination to make his analyses exhaustive. There was however one exception to his record of gradual mental growth. Most of his opinions moved slowly and steadily forward, but his political theory made a complete about-face.

Although Bentham was long satisfied with government as it was, he finally contrasted the indolent reactionary ruling classes he lived under with the energetic progressive people he lived

among, and an urge for reform came fast upon him. By 1790 he was a full-fledged radical democrat who called for a thorough parliamentary reform. He drew up plans for annual elections and a secret ballot. He insisted that political representatives be strictly dependent upon the people who elected them. Nothing less than a thorough overhaul would satisfy him. But if Bentham's political theory reached a uniquely radical peak of development by 1790, it plunged down again before another year went by. Why? Because in 1791 the French began to expropriate property. Like most Englishmen he was horrified by the 1793 Reign of Terror and thought it better to submit to known evils than to invite the unknown. In 1809 he began to consider parliamentary reform again, but it was not until 1817 that he rose to his earlier level of radicalism.

Yet everybody agrees that James Mill converted Bentham to democracy in 1809. Bain, Halévy, Bertrand Russell, Crane Brinton, Sabine, Plamenatz – all repeat this fiction. Naïvete, inexperience, unsubtlety, unchanging ideas, chronic boyhood, *philosophe* heritage, unoriginality, rationalism, individualism, *laissez-faire* policies, conversion to democracy by Mill in 1809: the list of fictions swells and is even now not at an end. Probably the largest and most important groups of fictions have gathered around particular parts of Bentham's thought – his psychology, ethics, and political theory. To expose them is one aim of this book.

People begin with Mill's flat, grey picture of Bentham's personality and transfer it to his doctrines. He knew nothing, they say, of horror and glory. He had no vision of the shimmering heights and black depths that other men see. To them he is Yeats' Whig:

A levelling, rancorous, rational sort of mind
That never looked out of a drunkard's eye
Or out of the eye of a saint . . .

His psychology is a generalization from his own barren experience; it is equally arid and so are the ethical and political theories he built upon it. Men are moved by many things besides pleasures and pains taken narrowly. Taken broadly, his hedonism is a truism. Leslie Stephen agreed with Mill that Bentham overlooked 'the moral part of man's nature in the strict sense of the term',⁴¹ and most modern critics such as Plamenatz agree with

him. There are many variations of Sidgwick's 'paradox of hedonism', that the more we seek explicitly for pleasure, the less shall we find it.

Bentham is said to have upheld incompatibles simultaneously: Utilitarianism and egoistic hedonism, a psychological and an *a priori* system of morals. The calculus is an easy target for every critic. Plamenatz speaks for most of them, 'Such a calculus is impossible, not merely in practice but also in theory.'⁴² He concludes, as people often do, that, 'The truth is that it is not possible to make sense of what Bentham is saying.'⁴³ Contempt for Bentham's ethics can reach so great a pitch that commentators will not stoop to read him. 'To read it all,' J. W. Allen assumed, 'would be a waste of time: I have not attempted the task.'⁴⁴ The ethics are 'rubbish'.⁴⁵

The truth, however, is that Bentham did not offer a systematic theory of ethics based on exact calculation, but a series of prudential rules addressed to legislators and judges based on a new vocabulary and a new logic. Mill condemned Bentham for dismissing 'vague generalities' which contain 'the whole unanalysed experience of the human race'.⁴⁶ But a good judge must analyse. It is a necessary part of his job to consider all the conditions of a case he decides. Bentham denied the possibility of *no* human experience; nor is his psychology a generalization from his own limitations. He drew his conclusions from the Court of King's Bench. Can there be a grander stage for the extremes of human passion – of love and hate, tenderness and brutality, cowardice and courage – than a court? Every variety of drama from high tragedy to farce is played there daily, and Bentham observed it year after year. Few philosophers can have been greater connoisseurs of human possibility than he was. Dostoevsky was not a trial reporter in vain; and neither was Bentham. His psychology began, as most of his thought did, in dissatisfaction with English law. There were primitive psychological assumptions underlying both statute and common law. He found them radically defective and offered an improvement. He was not concerned to describe every conceivable species of human behaviour but only those with social consequences, the publicly observable kinds a judge might have to estimate in court.

Bentham is said to have undervalued 'liberty' and the whole body of 'natural rights' which are political expressions of 'un-

analysed experience'. Austin's famous theory of sovereignty was supposedly Bentham's, a superficial top and bottom analysis of command and obedience which neglected the whole intermediate structure of power.⁴⁷ This is directly false. What is Bentham's logic of the will? It is an attempt to study the entire hierarchy of political command from the supreme executive in a state down to local officials and fathers of families. Some of his best and most original pages are analyses of the middle levels of power. How, he asked, can an effective civil service be created? What is the relation between local and national government? What is the status of administrative decisions?

How can so vast a body of fictions have arisen? How can so many brilliant men have spread them from generation to generation? Here again the ironies abound. People have seen a man who never was and a system of ideas he never upheld because their focus is wrong. It is both too wide and too narrow. They take a textbook view and look at Bentham as one of many in the history of ethics or the history of political theory. They must cover a huge territory in a few pages and are forced into the over-simplification of which they accuse him. Sometimes he is considered as the sum of his forebears merely, and entirely unoriginal; at other times, as a founding father of classical economics, and then the sins of his disciples are visited upon him. Austin's theory of sovereignty was not Bentham's, nor was James Mill's theory of democracy. James Mill, not Bentham, was the rationalist, the maker of syllogisms, the geometrician.

The history of ideas is a tightrope. It is as easy to plunge down one side, by reading more recent developments into a distant past, as it is down the other, by treating historical figures as merely a product of their predecessors. One way to hold a balance is to keep an eye fixed on one man in his time. Because theory without practice was worthless to Bentham, it is especially important to see him in an historical context. That is another aim of this book.

Lawyers see Bentham as a lawyer, a kind of renegade reformer who rightly pleaded for an overhaul of archaic legal institutions but in too radical a spirit, undervaluing the mass of habit and tradition that keeps society in equilibrium. Ethical philosophers see him as another ethical philosopher, an egoistic hedonist whose doctrines of Utilitarianism are too primitive to function as a tenable theory of ethics. Political theorists agree and add

that he had no vision of the state as a whole. They all concentrate on the opening chapters of *The Principles of Morals*. Perhaps they also read *A Fragment on Government* (1776), the attack on Blackstone. Critics inspect these few pages microscopically but they make little or nothing of the thousands and thousands of pages Bentham wrote both before and after. Theirs is the parochialism of which they accuse him. It may once be a good thing to see the man whole, as the maker of a theory of theories rather than any particular one; as concerned as much with the form as the content of theory. The great point in understanding Bentham is to appreciate what he was trying to do, not to attack him for things he did not attempt. He spoke to legislators about legal reform, and offered for their guidance an encyclopedic map of all human action, a logic of the will. He did not elaborate moral systems. He is often condemned for not making a 'true theory'. He did not try. Bentham has been stretched on so many Procrustean beds that it is hard to discover his original shape. His work has a massiveness, depth, and architectural beauty that those who flip impatiently through the first few pages of *The Principles of Morals* will never see.

Certainly Bentham was a lawyer, an ethical philosopher, a political theorist – but he was many other things as well. First of all, he was an analyst of language. Above all, he tried to create a new logic, an all-inclusive formal analysis of everything that man can do. And if his heroic ambition was doomed, still he advanced further toward it than anyone else before or since. First he systematically redefined the vocabulary of morals and politics in a neutral way, fulfilling the initial condition of scientific advance. He made a Utilitarian working model which could be, but was not, tested in practice; and never put forward any proposition without giving evidence or reasons for it.

However, the critics are not wholly to blame for their narrow view of Bentham. His reputation is also partly an accident of publishing history. Neither *A Fragment* nor *The Principles* was finished. He printed them reluctantly, hoping in vain to find an audience. For all their shortcomings, however, they are nevertheless the only general readable books he himself prepared for publication and revised for a second edition. Most of his other works were either occasional pieces of little interest to a modern reader; unrevised masses of manuscript, later drastically

edited by disciples such as Dumont, James or John Stuart Mill; jaw-cracking strings of neologisms that repel even the most patient reader; or have never been published at all.

Bentham's choice of literary executor was very unfortunate. John Bowring, an unctuous, pious, self-righteous man, issued the sole 'collected' edition in 1843. Guided by no discernible editorial standards, he left out at least a dozen important manuscripts and included none of Bentham's religious writings. He bowdlerized; haphazardly arranged one manuscript after another with little or no background information or dates; chose an execrable double-columned format; and so defeated Bentham's purpose of opening his work to all who could read. Bowring made him inaccessible.

He also made him seem a silly old fool. Almost everything we know about Bentham we learn from Bowring's 'Life' in volumes X and XI of the Collected Edition. There must once have been a great mass of Bentham's personal papers and letters, since Bowring quoted from many of them; but they seem to have largely disappeared. Bentham was seventy-three and Bowring was twenty-nine when they first met in 1821. Bowring was as eager to give as Bentham was to receive worship. They became inseparable and Bowring began to encourage the old man to reminisce. As Bentham rambled on, Bowring transcribed uncritically. Bentham's memory was wonderfully keen but sometimes faulty; his moods, capricious; his talk, charming but repetitive and disordered. There is no first-hand account of his years of maturity.

Bentham's inability to finish a work, his habit of rushing from one current problem to another, the fact that almost none of his writings is in print and that many of them have never been published, his notoriously difficult later style, the disservice of well-meaning but uncomprehending disciples, the shortage of direct evidence about his personal life: all these help to explain why so many fictions have arisen about him and his doctrines. But perhaps the biggest obstacle to seeing him clearly and simply is this: his most important work was never written.

In Bentham's attempt to chart the form of all human behaviour, to create a science of morals and legislation, the Utilitarian content of his thought went hand-in-hand with his formal analyses. But the form depended upon a neutral and unambiguous vocabulary and grammar. These are worthless

unless people accept them, and few did. The content of his thought, therefore, has never had a chance. Benthamism may be inadequate or wrong but we cannot be certain for it has never been tried.

Bentham touched on his new logic in the 'Introduction' to *The Principles* and again in *The Limits of Jurisprudence Defined*,⁴⁸ but no one encouraged him and he sent this more abstract part of his thought underground. From 1782 to about 1806 he did little or nothing with it, turning rather to more popular everyday subjects where his doctrines of Utilitarianism might immediately have good effects. In 1792 he saw his first opportunity not only to write about events but to take part in them. He began negotiations with the Government to design, build, and manage a large Panopticon prison. He planned to live in the central offices, the hub of this odd building as the cells were the spokes. But as often happened, these plans came to nothing. After more than a decade of exhausting and heartbreaking struggle with bureaucracy, after writing thousands of searing pages 'exposing' official evils, Bentham turned back to the things he knew and did best – codification and analysis. By 1802 he was hard at work on his great *Rationale of Judicial Evidence*, and by 1806 once again absorbed in his new logic. He no longer tried to keep a balance between old words and new ideas, hoping thereby to attract a sympathetic audience. His new analyses were made to please only himself, and he spun as many fine distinctions and coined as many new words to identify them as his subjects demanded.

For the rest of his life he played two parts simultaneously. In his public role he continued to rise to every crisis. As the nineteenth century wore on and the Napoleonic Wars drew to a close, these crises became increasingly political. The scattered long-time advocates of parliamentary reform began to draw together and Bentham joined them, adding his own badly needed common-sense pragmatism. The other Bentham went his own way, defining and refining the terms of a new logic, driven by the same grand vision of an encyclopedic outline of all human enterprise that he had first seen when he was twenty-one. He wrote masses of fragments on logic and language after the day's practical work was done, unhindered by the need to make popular concessions. These profound bits and pieces⁴⁹ are in an even worse shape than his other writings. Not designed for any particular occasion, they have no specific beginning or ending.

Nor were they edited and published by disciples as most of his popular works were. All the same, they are the core of his thought. No one who lacks the patience to follow him through these essential preliminary classifications and definitions will see him in proper perspective.

For Bentham, logic and language were not grammarian's toys but matters of life and death. He wrote in 1821:

there is a very dry . . . branch of art and science, denominated *Logic*: upon it, where government is the field of operation . . . as well as upon politics and morals, — hangs life and every thing else that man holds dear to him. Upon it, depends the choice of words . . . by which, according to the interpretation put upon them, man is destroyed or saved.⁵⁰

His Encyclopedical Tree was frankly anthropocentric and he considered 'ontology' and 'eudaemonics' practically synonymous. 'Eudaemonics' is the master art-and-science of well-being and he classified every event according to its contribution to human happiness.* Logic, then, the subsidiary art-and-science:

by which the mind of man is conducted in its road to the temple of happiness.

In this route, then, happiness is the *polar star* by which our steps will be guided. . . .

Handmaid, or rather governess, to each individual art and science, Logic beholds, comprehended within her all comprehensive domain, the particular domain of each.⁵¹

And words are the materials of logic. Simply as an analytic convenience the mind may be considered as divided into active and passive parts. That branch of logic which directs man's actions is the logic of the will.

From his first definitions to the last, Bentham spoke unavoidably in fictions. There is an irrecoverable gap between what we feel and what we say, between the structure of the universe and our description of it. We make fundamental ontological divisions: states of things and events, rest and motion, mind and matter.

Bentham went on from the basic dualist fiction of states of

* See Appendix A for the Tree.

things and events to non-human and human events, from human events to body and mind, from mind to the will (active) and the understanding (passive). Here the legislator came on stage, for he is the state's ultimate source and director of power. Bentham defined power as the 'faculty of giving determination either to the state of the passive faculties, or to that of the active faculties, of . . . the correlative subject.'⁵² The legislator is charged with the regulation of human events and he must therefore be the master scientist. It was above all for him that Bentham made his Encyclopedical Tree, or master plan of all the arts and sciences.

Exercising dominion over almost every branch of art and science . . . the legislator, on pain of acting blindfold, has need of an insight, – the more clear, correct, and extensive the better, into the matter of every such branch of art and science.⁵³

During his entire adult life, Bentham tried to direct the legislator's power in such a way that his best understanding and his will coincided. This job was well-nigh impossible, for it depended, as he knew, on a distinction that did not exist. Both his logic and his democratic political theory, which was one branch of it, began with a basic division between the understanding and the will. How could he make clear to others what he was necessarily vague about himself? This division could be spoken of in many different ways: thought and action, theory and practice, knowing and doing, art and science.

Where the effort, considered as necessary to the knowing what is to be known, is considered as greater than the effort considered necessary to the knowing what is to be done, the discipline has been put upon the list of sciences; in the opposite case, upon the list of arts.⁵⁴

But he knew that 'every distinction . . . cannot but be an indeterminate one. Efforts vary in degree down to o.'⁵⁵ For this reason Bentham often spoke of human disciplines as arts-and-sciences, and of his master science as the art-and-science of eudaemonics. It was worth only as much as the understanding and will of the man who made it. When he constructed his Encyclopedical Tree in 1815 he was sixty-seven, with a full lifetime of knowing and doing behind him. What did he know and what did he do?

All art-and-science presupposes learning. What was Bentham taught and what did he learn? The two were often different, and the origins of Utilitarianism lay in the tensions arising from his inability to reconcile them.

INTRODUCTION

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6 Quoted in Louis Hartz, *The Liberal Tradition in America* (New York: Harcourt, Brace and Co., 1955), p. 55.

7 Friedrich Nietzsche, *Beyond Good and Evil*, trans. Marianne Cowen (Chicago: Gateway Books, 1955), pp. 155-6.

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10 *Das Kapital*, Everyman edition, II, p. 671.

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12 See his essay on Bentham in *Mill on Bentham and Coleridge*, ed. F. R. Leavis (London: Chatto & Windus, 1950).

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15 Bentham to Dumont, 29 November 1821, quoted in Bernard Gagnebin, 'Jeremy Bentham et Etienne Dumont', *University of London Bicentenary Celebration* (London: H. K. Lewis, 1948), pp. 53-4.

16 Adams visited Bentham when he was Minister to Great Britain, 1815. A. M. 33551, p. 30, 22 September 1820.

17 XI, 82. 18 XI, 81.

19 University College Collection Box 149, p. 256. Hereafter referred to by box number, B.

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21 B. 132, p. 418, March 1819.

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24 Gagnebin, *op. cit.*

25 X, 26.

26 Leavis, *op. cit.*, p. 58.

27 *The Complete Works of Montaigne*, trans. by Donald M. Frame (Stanford: Stanford University Press, 1957), p. 296.

28 A. V. Dicey, *Lectures on the Relation between Law & Public Opinion in England during the Nineteenth Century* (London: Macmillan and Co., 1940), p. 128.

29 *Ibid.*, p. 25.

30 By J. B. Brebner, 'Laissez Faire and State Intervention in Nineteenth-Century Britain', *The Making of English History*, ed. Schuyler and Ausubel (New York: The Dryden Press, 1952), pp. 501-10; Werner Stark in his three-volume edition of *Jeremy Bentham's Economic Writings* (New York: Burt Franklin, 1952); and T. W. Hutcheson in his excellent article, 'Bentham as an Economist', *The Economic Journal*, LXVI (June 1956), 288-306.

31 (London: Longmans, Green and Co., 1949), pp. 578-83.

32 II, 130.

33 *Op. cit.*, pp. 132-3.

34 See David Baumgardt, *Bentham and the Ethics of Today* (Princeton: Princeton University Press, 1952), who does great service in exposing the rationalist fiction.

35 II, 55.

36 *Selected Writings of Sydney Smith*, ed. W. H. Auden (New York: Farrar, Strauss & Cudahy, 1956), p. 317.

37 A. M. 33553, p. 579, 2 December 1820.

38 Stark, III, p. 262.

39 *Ibid.*

40 See Stark, *op. cit.*

41 *History of English Thought in the Eighteenth Century* (New York: Peter Smith, 1949), II, 126. All the same, Stephen's *The English Utilitarians* (London: Duckworth and Co., 1900), vol. I, is still, after all these years, the most readable overall study of Bentham's thought. It properly emphasizes historical background.

42 John Plamenatz, *The English Utilitarians* (Oxford: Basil Blackwell, 1949), p. 76.

43 *Ibid.*, p. 72. He refers to the opening pages of *The Principles of Morals*.

44 J. W. Allen, 'Jeremy Bentham', *The Social & Political Ideas of Some Representative Thinkers of the Revolutionary Era*, ed. F. J. C. Hearnshaw (New York: Barnes & Noble, Inc., 1950), p. 181. This is surely the worst essay on Bentham ever written.

45 *Ibid.*, p. 198.

46 Leavis, *op. cit.*, p. 59.

47 See H. L. A. Hart's Introduction to John Austin, *The Province of Jurisprudence Determined* (New York: The Noonday Press, 1954), and the review of this edition in *Philosophy* (April 1956), pp. 163-4.

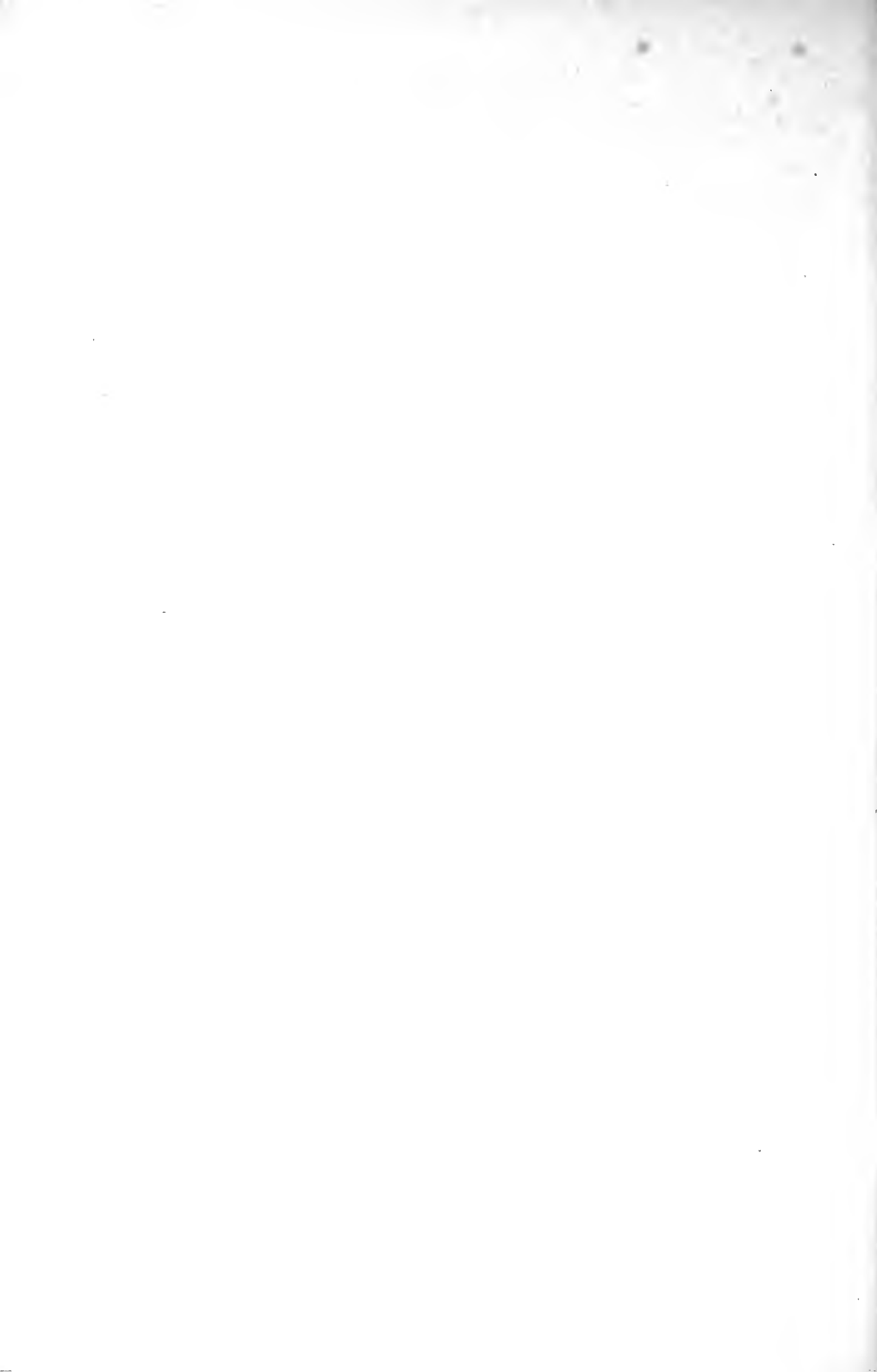
48 The continuation of Chapter XVII of *The Principles*, edited and first published by Professor Charles Warren Everett in 1945.

49 Many of them have been collected by C. K. Ogden as *Bentham's Theory of Fictions* (London: Kegan Paul, Trench, Trubner & Co., 1932). They may also be found in vol. VIII of the collected edition: *Chrestomathia*, pp. 63ff.; 'A Fragment on Ontology', pp. 193ff.; 'Essay on Logic', pp. 213ff.; 'Essay on Language', pp. 295ff. See also III: 'Nomography', pp. 231ff.; 'Logical Arrangements', pp. 285ff.; and 'Pannomial Fragments', pp. 211ff. See also Appendix C.

50 VIII, 508.

51 VIII, 241.

52 III, 222. 53 VIII, 102. 54 VIII, 241. 55 VIII, 240.



Part I

Learning:

1748-1769

I

Sentiment for Breakfast

*'Say not such dreams are idle : for the man
Still toils to perfect what the child began.'*

MATTHEW ARNOLD

The World of Books.

Among the noisy jostling crowd gathered in St James's Park on 22 September 1761, a boy of thirteen stood enraptured. Jeremy Bentham had come with his father to cheer George III on the way to his coronation at Westminster Abbey. As the thin and fair young King rode by, aglitter with £9,000 of hired jewels, the timid reserved boy was overcome with love and loyalty. He knew his Vergil and almost shouted 'O Deus certe!'¹ For him it was a sublime moment of high drama, a dream come true.

Six years before, when he was seven, Bentham first had a vision of the perfect king. His French tutor had given him a copy of Fénelon's *Télémaque*. It left a profound and indelible mark on him. About seventy years later he said:

That romance may be regarded as the foundation-stone of my whole character; the starting point from whence my career of life commenced. The first dawning in my mind of the principle of utility may, I think, be traced to it. . . .²

In Fénelon's story Mentor and Telemachus, in search of Ulysses, land at Crete during an election to fill the vacant throne. After an athletic competition, the victorious candidates are asked three questions. What man is most free? Who is most unhappy? Which of the two ought to be preferred, a king who is invincible in war or a king who, without any military experience, can administer civil government with great wisdom in time of peace?* Telemachus joins the contest and wins it. He argues

* These were not the questions as Bentham remembered them in his extreme old age. He thought they had to do with constitutional law, with the

that:

The most unhappy of all men is a king who believes he shall become happy by rendering others miserable: his wretchedness is doubled by his ignorance; for, as he does not know whence it proceeds, he can apply no remedy; he is, indeed, afraid to know, and he suffers a crowd of sycophants to surround him, that keep truth at a distance.³

Bentham drew the inference. The happiest man is the sovereign who makes his subjects happiest. The principle of the greatest happiness of the greatest number was a far-removed rationale of Bentham's childish romantic idealization of Telemachus.

Fénelon's book also aroused Bentham's ambition. *Télémaque* was an allegory. Mentor was Fénelon himself; and Telemachus, his pupil, Louis XIV's grandson, the Duke of Burgundy. It was a didactic handbook disguised as a rousing mythological adventure story. Bentham was completely captivated and identified himself with the wonderful hero. He recalled that Telemachus 'seemed to me a model of perfect virtue; and, in my walk of life, whatever it may come to be, why, said I to myself . . . should I not be a Telemachus?'⁴ He never abandoned his juvenile ambition. In 1831 he proclaimed it again: he wanted to be the most effectively benevolent man who ever lived. More than that, he rejoiced at his accomplishment. He flattered himself that he had become what he had set out to be. 'Somebody must have been so: and who else?''*

Bentham learned the meaning of 'justice' from *Télémaque*. He understood that it was no empty abstraction but a description of good behaviour. The book set up a powerful emotional tension in the impressionable little boy, one that gripped him again and again throughout his life. In one of his last essays he described this unending struggle as a battle between justice and loyalty. Justice always triumphed.⁵

George III's coronation day was one of the rare moments in Bentham's life when the conflict was stilled. Almost everyone

best form and the proper objects of government (X, 10-11). But he re-lived his childhood adventure as he lay in bed aimlessly talking to Bowring and suspended drowsily between waking and sleeping. Bowring wrote down what he heard without checking it, and Bentham himself was much too busy and impatient to bother. The memoirs, vols. X and XI, are often hilarious, but a hodge-podge and full of hazards for a scholar.

* See p. 8 above.

agreed that the new King, just twenty-three years old, was good and amiable. If anxiety to please and a strong sense of duty were measures of virtue, George III might have been a living *Tele-machus*. Bentham passionately believed he would be.

In fact he was not, but it was some years before Bentham understood enough of the general structure and function of government to rebel against his early romantic image. It was a naïve and sentimental mixture made of an old ribbon of George II given him by a cousin, of the bloody battles led by kings that he had read about in Rapin's history since he was four, of riding past George II and glimpsing the back of his head, of writing a dutiful Latin elegy when he died in 1760, and of course *Télémaque*. Bentham finally threw over the remainder of his early Tory opinions in 1790. By then he had developed a kind of political sociology. He understood as he had never fully done before how the subordinate institutions of society interlock and are controlled by the sovereign power. The Church, the feudal remnants of guilds and livery companies, the public schools and universities, the law courts – even private morals and family relationships – all were directly or indirectly guaranteed by the legislative and executive branches of government. The Establishment was all of a piece.

But even at thirteen Bentham's loyalty and sense of justice had long been in conflict. If he knew nothing of government on the higher levels, he had had a great deal of painful experience with it on lower domestic ones. He had learned a hard lesson early: things are not as they seem. What men say is one thing; what they do is another; what they ought to do is sometimes still a third. He lived in chronic, gloomy, inarticulate tension between his father's commands and his own desires, between the lessons he was taught and those he learned for himself.

His father, Jeremiah Bentham, was a prim, precise, conventional man, determined to make his son a model of orthodoxy with the whole set of opinions and prejudices it entailed. He expected his boy to be a dutiful child, a faithful communicant of the Church of England, a proud wearer of the old school tie, a diligent student and admirer of English common and statute law, an eloquent barrister, and, ultimately, a proud Lord Chancellor of Great Britain. The little boy trotted along in the paths marked out for him, obediently and industriously, but ever more doubtfully and miserably.

Soon after he was born on 15 February 1748, Jeremy Bentham's parents happily discovered that he was a prodigy. He could identify the letters of the alphabet before he could talk; he taught himself to read when he was three; and at four was engrossed in Rapi'n's history. Aged three, he sent his grandmother apologies for the imperfections of a letter:

Honoured Madam. I have been very much troubled with Sore Hands, but the greatest Trouble was their preventing me thus long from writing to my dear Grand-Mama, indeed if you knew how bad they are still, you would be surprised at my handling my Pen at all, having only the use of my Thumb and the Top of my fore Finger, all the other Fingers of Each of my Hands being tied up together in a linnen Bag, otherwise I sho^d say a great deal more besides that I am Your dutiful Grandson.⁶

Jeremiah Bentham delighted in his son's precocity. With the meticulous precision that characterized everything he did, he drew up a detailed plan for Jeremy's education. His own ambitions had once been big but they had been thwarted. He now transferred them to his little boy. He had not gone to Westminster and Oxford; his son should go. He had not eaten his dinners at one of the Inns of Court; his son should eat them. He was only an attorney, who prepared the preliminary papers in legal proceedings; his son must become a barrister, who pleaded at the bar. He had manœuvred in vain for a baronetcy; his son should be ennobled. With much of Dr Johnson's irascibility and none of his wit, Jeremiah Bentham shared most of his opinions. Both were strongly, and rightly, convinced that the sure road to success for the middle classes under the hierarchical conditions of eighteenth-century English society was the law.

Jeremiah Bentham was not a very active attorney. He kept only one clerk. Most of his large and growing income came from a shrewd speculation in real estate. He had time, therefore, to teach Jeremy himself. They began with Latin and Greek. Gradually other instructors were added. The boy had lessons in the violin, harpsichord, composition, drawing, French, close-order drill, and dancing. A small and weak child, he was awkward at drill and dancing. Nor could he draw very well. But he soon became an accomplished musician and never lost his passion for music. Ladies at tea could always count on him to accompany them in a Corelli or Handel sonata. He was one of

the first people in England to own an improved 'piano', and visitors to his 'Hermitage' at Queen Square Place were astonished to discover an organ or piano in every room. The French lessons were equally successful. Bentham loved his tutor La Comte who, though fired within a year over a salary dispute, taught him so well that many of his early manuscripts were written in French.

Yet as early as these years of childhood tensions had already set in. To assure his sobriety and orthodoxy, his father censored the books in the family library. Whatever books were made for laughter, whatever was irreverent or not obviously instructive, was locked away. Only the heavy depressing volumes were left. There were old-fashioned histories and chronicles like those of Stow and Rapin, simple narratives of kings, battles, and treaties. The boy read them with mixed feelings of glee and shame. It was exciting to imagine armies thundering down a plain, swords flashing and heads rolling in the dust, but he could not understand how mass slaughter could be an index of royal or national greatness.

There were also earnestly moral and religious books like Bunyan, Cave's *Lives of the Apostles*, and Bishop Ken, often illustrated with horrifying woodcuts of burning saints, disembowelled martyrs, and the fiery topography of hell. Dr Johnson was of course on the shelves. *The Hermit of Teneriffe*, Johnson's own favourite work, made Jeremy profoundly melancholy:

There was the poor ideal traveller, toiling up the hill, with Reason and Religion for his guides, and an unfathomable abyss at each side, ready, at the first *faux pas*, to receive his lacerated corpse; as it actually did those of the greatest part of the travelling population whom I saw toiling towards that summit. . . . Every now and then, after reading a page in this history . . . which taught me to look out for that too probable day in which I should be burnt alive, it occurred to me that I had better not have been born. . . .⁷

His father wanted him to be pious; instead, he was terrified and repelled by religion. He never could understand why it must be painful to be good. Morbid piety oppressed him, both as a child unable to sort his jumbled emotions and as an old man who had spent a lifetime teaching a lighter, brighter, morality. Bentham's hedonism had its origins in his father's library. Like the other parts of his system, his ethics was not self-contained but

the final constructive stage of a process that began in emotional dissatisfaction with an existing institution. He set up his principle of utility in opposition to the principle of sympathy and antipathy and the principle of asceticism. Dr Johnson seemed to him the principle of asceticism personified, a frowning John Bull who upheld a system of pernicious values that ought to be stamped out. Bentham always condemned 'that pompous preacher of melancholy moralities',⁸ 'the miserable and misery-propagating ascetic, and instrument of despotism'.⁹

All the same, Bentham was fascinated by him. He sought him out at the Mitre Tavern and joined one of his conversation clubs. Bentham remembered nothing of the club dinners but a lapse of Boswell's. As the members settled themselves in the drawing-room after dinner, the biographer murmured excuses and returned to the dining-room. Bentham was curious and, after a pause, followed. He discovered him making a circular tour of the table, gulping down the remains of each decanter. Boswell, he testified, was eloquent that night.¹⁰

Bentham's usual style of comment on Dr Johnson's 'deluded but powerful mind'¹¹ was coarse diatribe. Bentham was not, however, the primitive psychologist he is often said to be, and understood and sympathized with Johnson's deep melancholia. He had himself suffered in the same way and admitted that:

the doubts that sprang up in my mind had nothing in them so horrific as those which by the Christian dispensation were produced in the mind of Johnson. They were the torment of his life and Johnson was not unknown to me. [They] . . . filled the whole expanse of it with that sort of melancholy madness, which gave its [stamp] . . . to everything that came from his pen, and spread the infection to an extent that can not too seriously be deplored.¹²

Gradually Bentham discovered that the universe of books was not bounded by his father's library. His tutors assigned new reading. Every summer he stayed with his grandmother at Browning Hill, where the atmosphere was free and bright, and *Gil Blas*, *Gulliver's Travels*, and Richardson's *Clarissa* and *Pamela* were on the shelves. An elm tree was his arm-chair. He climbed up and read for hours in delicious solitude, crying over the catastrophes of heroines.¹³ Occasionally his father took him visiting. While the adults gossiped, Bentham ransacked the library for new adventures. In Suffolk in 1759 he casually pulled

down a recent best-seller, the three-volume memoirs of a prostitute, *An Apology for the Conduct of Mrs T. C. Phillips*.¹⁴ In a few moments he was completely engrossed, and a new conflict between what is and what ought to be raged in his imagination, one so furious that it was stilled only at his death in 1832. What, then, did Bentham discover in these gripping memoirs?

An Apology is an extraordinary farrago, a kind of *Moll Flanders* written by Richardson. It is full of melodramatic seductions, lovers' flights and pursuits, scenes of Parisian gambling dens and the wilds of America, languishings in jail, and even a secret poisoning, always followed by pages of overwrought atonement. The thread that tied these rambling scandals together was a lawsuit so tortuous and long-drawn that it rivalled Dickens' *Jarndyce vs. Jarndyce*.

The source of Mrs Phillips' legal troubles was a respectable middle-class marriage. To her surprise, an infatuated young Dutch merchant named Muilman proposed to her early in the 1720s, though he knew she was a prostitute and had once made an unconsummated Fleet marriage to escape imprisonment for debt. When his father in Holland heard of the marriage, however, he demanded an annulment. The Muilmans brought charges of bigamy in Doctors' Commons,* and won their suit by bribing her Fleet husband to perjure himself. For some years her former husband paid her a £200 annuity, until mounting gambling debts and the bills of a wild new lover forced her to beg for a £700 advance. As security she left her annuity deed. After the term of the advance, she called to reclaim the deed and Muilman refused to surrender it.

For the moment she could do nothing, but in 1733 the perjurer's conscience smote him and he offered to recant. Before his testimony could be taken, he was found dead in bed, probably poisoned. Mrs Phillips moved quickly. She got a copy of the marriage register proving that this man had already been married before the Fleet ceremony. Muilman saw at once that her evidence was decisive and offered her a lump payment of £5,000. She refused. He rose to £8,000. Still she refused. She wanted vengeance.

Meanwhile Muilman had married again and was raising a large family. His second wife was the daughter of Sir John

* Another name for the Consistory Court of the Bishop of London, the court of first instance in marriage cases until 1857.

Darnell, a well-known lawyer. He now received the most skilful professional advice free, and Mrs Phillips was doomed. But not until another fifteen years went by and she had exhausted her entire £20,000 fortune in legal costs.

First Muilman challenged the authenticity of the marriage register. Then he had the case transferred to the Court of Arches, the ecclesiastical court of appeal, which involved an entire new set of papers and briefs. He petitioned to have his wife and children made parties to the suit, and Mrs Phillips had to file charges against each one of them individually. Still not content, he appealed to the Court of Delegates, the supreme court in marriage suits. That was a shrewd stroke. The Court of Delegates almost never met. It was a lay court of peers and common law judges who were so busy with their own affairs that they rarely assembled.

Mrs Phillips was hard-pressed but still game and resourceful. She filed a petition to have the charges consolidated and directed solely against Muilman. When it was granted, eleven counsel appeared for each side, all armed with an entire forty-sheet record of the case. The copying fees alone were £300. She then persuaded a creditor to sue her for debt in the secular Court of Chancery, to speed the annuity case along by proving that her ex-husband was legally responsible for her. That was bad strategy. Sir John Darnell was a drinking companion of the Masters in Chancery* and used his influence to stop the action. At the same time Muilman moved against her in Chancery for suborning witnesses. Now the whole case was brought down from the church courts. Presented by ten counsel for each side, it cost £400 more. She was also committed to jail for five days for contempt.

In the church courts Mrs Phillips had had a chance. In Chancery, staffed as it was by Sir John's cronies, she had none. One of the judges called her into his office. She burst in unannounced and found Sir John there. The judge questioned her about the case, a high irregularity, for it was not due on his calendar for two months. She answered him defiantly.

Mrs M. I won't tell you.

J. You won't tell me, Madam! (With an Air of Terror, not

* Subordinate judges under the Lord Chancellor who supervised litigation for bankruptcy and debt.

unlike the Delphic Priestess big with Prophetic Fury.) I'll make you tell me, Madam!

Mrs M. You may endeavour at it, my——: but it is a hundred to one if you succeed.

J. Your proud spirit may be taught to bend, Madam.

Mrs M. Even in that, my——, you are still mistaken; for there is nothing in my Nature so pliant that the most wicked Tyranny can bend.

J. You don't know, Madam; you'll find that Courts of Justice have *long claws*.

Mrs M. It may be so, my——; but I have been so *scratched* by them already, I am quite unconcerned at their Power. . . .¹⁵

Still undaunted, in 1738 she brought another suit in Chancery for separate maintenance. Muilman easily stalled by filing a cross-bill. There for several years the case rested. Mrs Phillips found a new lover and pursued him from Jamaica to Boston to New York. Finally she returned to England in 1742, penniless and friendless. Once again she reopened her suit, this time with a sense of urgency she had not felt before. Muilman outmanœuvred her completely. For two years she could not get a hearing. One or more of the counsel would 'forget' to show up. If the counsel came, the solicitor 'forgot'. Or they haggled over the position of one word in the charges and demanded a complete rewriting. Each meeting cost two guineas. When the case was finally tried, the judge had to be prodded to stay awake and could not be made to understand the charges. After answering six or seven of Muilman's further objections and spending £600, Mrs Phillips obtained a favourable verdict, only to discover that her lawyer was a rogue who had drawn the charges improperly. There was no remaining alternative. She was forced to pay all past costs and to try to bring in an entirely new bill. This required £1,200 and she was bankrupt.

And so she was finally undone. Muilman offered £500 for a full and final renunciation and she accepted it. At once her crafty lawyer sued for £500 fees, and an innkeeper sued for a £60 room and board bill. From the ecclesiastical courts to Chancery and now to local debtor's court she was pursued by the law. Still she fought on, though not until her release from ten weeks in jail. She scraped £50 together for a writ of *habeas corpus* and, once again free, began to write her memoirs. They were her only hope of paying her debts. As she finished the last page of the last

volume, the law still ground away remorselessly, like a perpetual motion machine.

Bentham was profoundly moved by Mrs Phillips' troubles. No other book he read as a child affected him so deeply. He was appalled to realize that he was destined for the law, that he must learn to use that instrument of torture which had made her so wretched. Again and again he remembered:

Ding dong went the tocsin of the law. Tossed from pillar to post was the fair penitent – from Courts Temporal to Courts Spiritual, by Blackstone called Courts Christian: and . . . in this griping, in this screwing, in this eviscerating form – that *Christianity* (as the saying is) *is part and parcel of the law of the land* is but too true. Lengthy of course was the vibration . . . while reading and musing, the Daemon of Chicane appeared to me in all his hideousness. What followed? I abjured his empire. I vowed war against him.*

His anger was slightly out of focus. That the divorce courts were ecclesiastical had nothing to do with their oppressiveness. In fact, disasters piled high on Mrs Phillips only after her case was transferred to Chancery. The church courts could indeed be 'griping, screwing, and eviscerating', but for the same reasons that the whole English legal system could be: the archaic and unintelligible technical procedures, the delays, and the method of payment by fees. In the Suffolk library, however, Bentham found a new deep gap between what was said and what was done. His father told him that English law was the perfection of justice, a distillation of human wisdom from time immemorial. Now he learned that it was in fact brutally unjust. At the same time his resentment of the religious establishment reached a new high. Now he first sensed that religion was more than moral precepts in gloomy books. It was a living tyrannous political institution, intermeshed with another instrument of oppression, the courts of law. He felt that saints and martyrs were more than historical figures in dusty books; they were living creations of the Church itself.

* X, 35. See also X, 77–78, and VII, 219–20, as well as 'The History of the War' above. Mrs Phillips' spirit hovered over Bentham perpetually. She once lived in Red Lion Street, Houndsditch, where he was born, and she published her memoirs from the house in Queen Square Place that his father bought in 1763, which he inherited in 1792, and where he died in 1832. He believed that the memoirs were ghost-written by Paul Whitehead.

The Empty Years of School.

As Bentham's small universe expanded, his dissatisfactions multiplied. The more he saw, the more his feelings conflicted with facts. When he was seven his father enrolled him as a boarder at Westminster School. The beautiful old buildings whose massive pillars and arches had been built by Edward the Confessor adjoined the cloisters of Westminster Abbey. In 1755 it rivalled Eton as the most fashionable school in England. There were no dormitories. The boys lived in private houses around the school yard. Here Jeremiah Bentham expected his son to take the first steps from the middle class to the peerage. He wanted him to 'make connections', the usual path of social advance in eighteenth-century England when the political structure was built on personal and family relationships.

Bentham soon underwent a course of instruction that was not in the curriculum. He learned what it meant to be well-born, the power and privileges it brought; what physical brutality was; what wealth and poverty signified. He had not known before. For generations the Benthams had been city people. They lived and worked in the same neighbourhood, as most other tradesmen and professionals did, until the great westward expansion of London in mid-eighteenth century. The City government was elected by freemen of the twelve chief livery companies; this privilege was a feeble remnant of their former greatness. Jeremiah Bentham was clerk and director of the Scriveners' Company, a small subsidiary of the Ironmongers, which formerly held a monopoly in attorneyships. It had long since lost its favoured position and sold the great meeting hall; it was in fact little more than a social club that met at the White Conduit House. Its business was planning and eating dinners, thus spending a large income from centuries-old investments.

In this circle Jeremiah Bentham moved with ease and honour. As the head of an established family, the officer of a wealthy company, a rich man in his own right, and a responsible and active participant in civic affairs, he was a respected and prominent middle-class* citizen. But this was a narrow circle. His friends and acquaintances had similar backgrounds. Among

* The phrase 'middle class' was unfamiliar before Lord Brougham's speech in 1831: 'by the people I mean the middle classes, the wealth and intelligence of the country, the glory of the British name.' See Roy Lewis and Angus Maude, *The English Middle Classes* (London: Phoenix House, 1950).

them were Sir John Hawkins, Lord Mayor in 1784; Richard Clarke, Chamberlain of the City;* Cox, one of the Masters in Chancery; and Dr Markham, then head of Westminster School and, after 1777, Archbishop of York.

Until Bentham went to Westminster his world was entirely his father's. He was not permitted to play with other boys. Jeremiah Bentham wished to keep him pure for the Lord Chancellorship, a model of social graces uncontaminated by the local artisans' and tradesmen's sons. The small world of Jeremiah Bentham revolved around the coffee-house and he often proudly took his infant phenomenon along with him. There Jeremy saw his father as one among equals or inferiors. Jeremiah Bentham was very conscious of his position and extracted every ounce of prerogative that went with it. At the annual Scriveners' Company dinner he always managed to drink expensive hock while the ordinary members had watery port. The officers planned for the great affair at other small dinners, also paid for with company funds, and sent turtle home to their wives.¹⁶

At school it was soon clear that these privileges his father insisted upon were trivial. Bentham saw the small sons of peers treated with elaborate deference by grown men. While he was crowded into one room with two other boys, Edward, son of the Duke of Portland, had a large suite of his own. Dr Markham was more preoccupied with his own ambition than with teaching. Whether the boys did well or ill was all the same to him. He came before them occasionally, a tall, dignified, revered figure who declaimed a few Latin verses and then swept off to cultivate the great.¹⁷ He was noted more for his strong Tory sermons than for classical scholarship. Other members of the staff were sinecurists, paid for doing nothing; and Bentham suspected that the higher their rank, the less they did.

As it had been and as it would be for generations, the curriculum at Westminster was exclusively classical. Bentham made Latin and Greek verses as Locke, Dryden, Lord Mansfield, Cowper, and Gibbon had before him. Like most of them he was unhappy there. The second smallest boy in the school, 'a dwarfish phenomenon',¹⁸ he was no good at games. Cricket was even then the centre of school life. He was no better at less strenuous favourites like pitch-farthing, taw, and hide-and-seek among the Abbey cloisters.¹⁹

* An office similar to Treasurer.

The brutality horrified him. Jeremiah Bentham was a stern autocrat, but Jeremy was a good boy who did as he was told without physical threats. Nor was he whipped at Westminster. He did his work quickly, punctually, perfectly, and was a favourite of the masters. But he saw them flog others, and he saw the boys torment each other. When Locke was asked his opinion of Westminster, he answered, is it 'worth while to hazard your son's virtue for a little Latin and Greek?'²⁰ Bentham agreed. Physical pain was always an ugly mystery to him. He knew little about it; no one hit him and he was never seriously ill. His chronic terror of it affected his hedonism; he exaggerated man's fear of pain and susceptibility to punishment.

The other boys had 'tips'; Bentham had none. His father once gave him 4s. 6d, but he had spent only a shilling before the rest was stolen. Disgusted, Jeremiah Bentham gave him no more. So he was still further marked off from his fellows. Yet with no money to spend, how could he do the social 'pushing' his father demanded? In fact Jeremiah Bentham's motives clashed. His parental pride and ambition were overcome by tight-fistedness. By accident, though, Jeremy did come to the attention of the great. Two sons of the Duke of Leeds were at Westminster. On a visit the Duchess heard of the child-wonder and called out to him as he played in the school yard, 'Little Bentham! you know who I am.' He answered, 'No, madam, no! I have not that honour.'²¹ Delighted at so gravely respectful an answer from so small a boy, she soon invited him home with her children.

His first visit was unsettling. The Duke introduced him to another guest, a physician. 'This is Bentham - a little philosopher.' 'A philosopher!' said the doctor, 'Can you screw your head off and on?' 'No, sir!' answered Jeremy. 'Oh, then, you are no philosopher.'²² The rest of the evening went well, however, and Bentham was invited again and again. His father rejoiced and thought his future was fixed.

But once again Jeremiah Bentham's motives conflicted, and this time his pride in the boy's precocity conquered his sense of social strategy. In 1760 he enrolled him, aged twelve, at Queen's College, Oxford, the youngest student in the history of the university. Like Westminster, Queen's was fashionable, and Jeremy was again expected to cultivate the peerage. But if he disliked Westminster and was lonely there, he hated Oxford and was almost completely isolated. For 'pushing' depends on some

relation between the pusher and the thing pushed. Most of the first-year students were eighteen or older. They were men; he was a child. As they roared their drunken songs at midnight, he cowered under the sheets hiding from ghosts. 'Port and prejudice' were the great perils of student life, and he was too young to be tempted. Others came to play; he came to learn.

A fog of boredom hung over Oxford in the eighteenth century. Every day the Fellows of Balliol sat in a row in front of the college, dawdling and waiting for the mail coaches. There was little else to do. The 'Lounger's Diary' of 1760 was typical:

From the coffee-house then I to tennis away,
And at five I post back to my College to pray:
I sup before eight, and secure from all duns,
Undauntedly march to the *Mitre* or *Tuns*:
Where in punch or good claret my sorrows I drown,
And toss off a bowl 'To the best in the town':
At one in the morning, I call what's to pay,
Then home to my College I stagger away.²³

Degrees were given for residence. The examinations were a farce. Candidates supplied themselves with 'strings', lists of syllogisms that were passed on from one student generation to the next. They had only to memorize them and their degree was assured. When they met their examiners, they chatted amiably about wines or horses, or read a novel until the clock struck eleven, when the Master signed their *testimonium* as bachelors of arts.²⁴

Bentham saw none of the 'progressive emulation' that Dr Johnson valued so highly. His three undergraduate years at Oxford were a dreary waste. He made no friends and learned little. 'I was a child without a guide - ' he recalled, 'idling, trembling, and hiding myself.'²⁵

Bentham's day followed a dull routine. There were few public lectures and such instruction as he got was given by his private tutor. Jacob Jefferson was a morose unimaginative pedant who mechanically assigned lessons that the boy had already done at Westminster.²⁶ Twice a day, at eleven in the morning and nine at night, he consulted with Jefferson.²⁷ At one the dinner trumpet blasted. In the afternoon Bentham studied, took lonely walks in the neighbouring countryside to collect plant specimens,

or played an occasional game of his favourite battledore and shuttlecock. He continued Matthew Arnold's 'grand old fortifying classical curriculum', rounded off by lectures in the Greek Testament and oral disputations in Hall. The physics course he pleaded to attend was disappointing. The instructor bungled almost every experiment.²⁸ He was even more eager to hear the chemistry lectures but was afraid to ask his father for the extra fees.

Bentham's unhappy round was sometimes brightened by gaudy- and domus-days, when Queen's endowments provided for special feasts. The annual Christmas dinner began with a grand march into Hall, its leaders holding a boar's head aloft. The Bursar celebrated the New Year by distributing threaded needles, saying, 'Take this and be thrifty.'²⁹ Beyond these age-old customs, Queen's was famed for two things, the great number of clergymen she produced and her training in logic. This training was the sole course of instruction that Bentham was grateful for. Aristotle was not offered directly, but through the compendiums of Saunderson and Bishop Watts. In their texts he discovered the Porphyrian tree, the ancient system of analysis which divided all subjects into two and only two classes. It was decisive in shaping the way his mind worked. He adopted the method, called it 'exhaustive bifurcation', and used it unremittingly throughout his life. He confessed, 'It has been of unspeakable use to me.'³⁰

Bentham learned one other thing at Oxford and that too was decisive. He was forced to subscribe to the Thirty-nine Articles. When he read them through, he could make no sense of some; others he thought irrational or against Scripture. The religious tutor whom he hesitantly approached for advice told him coldly that ignorant boys must not question authority. He signed but as he later said, 'by the view I found myself forced to take of the whole business, such an impression was made, as will never depart from me but with life.'³¹ He was sure that no one could honestly swear that all the Articles were true, and thus the Established Church made perjurers of all who did. He had come to Oxford with two counts against the Church, its oppressive morality and the legal tyranny it imposed on Mrs Phillips. Now he added a third, its system of oaths which made him a liar. He saw too how the Church was bound to the universities as well as the law courts: they were interrelated parts of a structure he did

not yet fully understand. But what he knew of the separate parts he deplored.

From his quandary at Oxford Bentham developed a sour view of official religion that he never abandoned.* Forty years later he said:

As a man of orthodoxy anywhere, what is a fundamental? His answer comes to this – it is what I am most earnest about. Ask him, how comes he to be so earnest about it? It is because other people are – How came these other people to be so? It is almost always because once upon a time, two men having a dispute, one of them having the worst of it but being the best intriguer, grew angry, and got the magistrate to oppress his adversary.

They have made us subscribe to [Christ's] . . . Descent into Hell – it is God's mercy they never took it into their heads to make us subscribe to a Map of the Voyage. – ³²

Bentham made oaths an enormous issue because he considered them the tie between morals and politics. Good government depends upon true statements of fact.

Veracity is one of the most important bases of human society. The due administration of justice absolutely depends upon it; whatever tends to weaken it, saps the foundations of morality, security, and happiness. ³³

Bentham's trip to London for the coronation ceremonies in September 1761 was a joyous though temporary escape from his lonely vapid routine, and he was grateful to his father for inviting him up. Not that Jeremiah Bentham ever suspected his son's miseries. Bentham kept them well hidden and sent home the detailed respectful accounts that were expected. He understood his father very well, his vicarious pride and ambition, self-importance, and love of power. He was also a little afraid of him. But Bentham could not have explained his own discontent even had he wanted to, for he did not know its nature himself. His sense of justice was continually outraged but he did not yet see that his loyalty was in any way connected with it or threatened

* For corroboration of some of the facts on which Bentham based his opinions, see Norman Sykes, *Church and State in the Eighteenth Century* (Cambridge: Cambridge University Press, 1934), especially Chapters II and IV; and also his essay, 'The Church', in *Johnson's England*, ed. A. S. Turberville (Oxford: Clarendon Press, 1952), I, pp. 14–38.

by it. He sped back to Oxford after the ceremonies in a 'flying machine',* as ready as always to march quietly and diligently in the orthodox track his father had laid out for him.

A few months before, he had ground out a conventional piece of rhetoric, an oration endorsing Horace's maxim, *Sperne voluptates: nocet empti dolore voluptas*. Despise pleasures: pleasure bought by pain is noxious. He was so proud of it that he made both English and Latin fair copies.

Among all the follies and pursuits of mankind nothing surprises me more, my fellow Collegiates, than that man should think of attaining the highest felicity by these means, which, instead of producing Pleasure are on the contrary frequently attended with pain and misery; for it seems unworthy of man, possessed as he is of that noble faculty of Reason, who discerns the consequences of things, understands their Causes, and, by comparing things with one another, can choose the Good and avoid the Evil: yet Beasts, that are actuated by mere sense alone, can guard against and fly from things hurtful, and know how to shun those things that are attended with future pain as cautiously as they w^d the venomous bite of a Viper. But Man, who, on account of his rational Facultys, boasts of his Excellence above the Beasts, and greedily covets, ardently longs for, and stupidly pursues these very things the wiser Brute flies from and avoids. O blind Infatuation of Men that despising the Council of Reason, their best guide, drives 'em head long into certain and manifest rune: Is this to excell the Beasts? Is this your so much boasted Wisdom? for shame! this is madness itself; to abuse the best and most precious gift of the deity by means so mad, so base, so impious. But this appears with still greater certainty when we turn our Eyes towards the objects of men's pleasures and delights; the Life of the Voluptuary is one continued scene of madness, while he gives himself up entirely to the deceitful allurements of Pleasure, not only not avoiding but eagerly meeting, of his own accord, the Snake that lies hid in the Grass: instead of joys he is preparing for himself cares – instead of happiness – pain. Why sho^d I call to mind the Adulterer who seeks his supreme felicity in parties of Lewdness and nightly debaucheries? Why – the glutton . . .? Why the miser . . .? [But] . . . drunkenness [is] of all false pleasures the most fallacious. . . . Reason in a drunkard is so far buried in wine that he knows not what he says – what he do's – what he sees. . . . Despise – therefore pleasures my fellow Collegiates – but of all pleasures chiefly that of drunkenness for as it is unworthy every man, so, more especially, is it a disgrace to a Gentleman, but above all to a scholar.³⁴

* As the fast new stage coaches were called.

These sentiments might have come with more conviction from one of Bentham's older fellow students during a remorseful hangover than from an uninitiate of thirteen. Bentham was as energetic an anti-hedonist as any ascetic could wish, and a naïve representative of an attitude he soon came to despise. After he discovered the principle of utility, he denounced the principle of asceticism for the rest of his life. Sixty-eight years later he returned to the same Horatian maxim.

Despise pleasure; pleasure bought with pain is noxious. Silly enough, all this; but sound, when with a small admixture of good sense, it is styled poetry; . . . If pleasure is a proper object of contempt, what is it that is the proper object of esteem? Pain or apathy? Pleasure paid for by pain is a bad bargain, says the philosopher in his fool's cap . . . just as if . . . a man you know nothing of were to come and say, 'Sir, you pay too dear for your sugar,' not knowing what you pay. . . .

In this one verse may be seen the ascetic principle and the greatest happiness principle breathe out the same breath. '*Despise pleasure*' is asceticism pure . . . : *pleasure paid for in pain is noxious* has at bottom a spice of Utilitarianism in it, though . . . by stale water made up into this mawkish draught.³⁵

Here in two commentaries on the same theme is the history of Bentham's ethics.

Father and Son.

Bentham once wrote a fragment of a preface that began:

(Sentiment – good for breakfast, bad for supper) Sentiment serves excellently well to form the infancy of the human mind: but it serves only to disturb its judgment when it is arrived at manhood: It serves excellent well to bring man to listen to the dictates of Utility: but when it has done that, it has done its office. . . .³⁶

He was partly right and partly wrong. Sentiment led him to utility but it had not yet done its office. Many years passed before he made the principle of utility his own and began to resolve his childhood tensions. When he ultimately found a Utilitarian resolution, he formed it from his early sentiments, passions, and conflicts. He wasted nothing and was endlessly resourceful in transforming emotions into rationales. Almost every one of his

general ideas had its origin in some shocking or joyous experience of his childhood.

Abstractions always bothered him. He had read Locke's *Essay* at Browning Hill and was puzzled by words like 'power'.³⁷ When he began to study law at Lincoln's Inn in 1763, he came upon many other unintelligible fictitious entities. Such words as right, property, obligation, and duty seemed to have no fixed meaning. To give them one Bentham later invented a new method of definition called 'paraphrasis', whereby words were arranged in sentences and defined by simpler equivalent sentences suggesting material images.³⁸

Paraphrasis was more than a mode of definition. It was also a generalization from his own experience and the foundation of a fragmentary epistemology. He offered it with assurance because it simply reversed the path his own ideas had taken. Some influences were obvious and it amused him in his old age to explain them by paraphrasis. When he surveyed the thousands of pages of his massive system of law reform – substantive and adjective; civil, penal, and constitutional; procedure and evidence – he traced them back to Teresa Constantia Phillips. His political theory, he mused, began with Telemachus and the ideals of justice he inspired. And so, he noted, his religious convictions had been fixed by the oath-taking ordeal he underwent at Oxford.

He traced his theory of fictions to the ghost stories he heard as a boy. When he climbed into his grandmother's bed, she whispered tales of the ghost her mother had actually seen. Because he was not allowed to play with other children, he tagged after the servants. When he became too great a nuisance they frightened him away with visions of Bloody Bones and Rawhead.³⁹ The horrible spectres that rose before him became so real that he never routed them, absurd as he confessed his fears were. He told Bowring, 'this subject of ghosts has been among the torments of my life. Even now . . . though my judgment is . . . free, my imagination is not wholly so'.⁴⁰ Bentham drew a parallel between his own terror and the enormous power of political myths and symbols. In each case something was made out of nothing. Though nobles and kings were but men, he admitted their mysterious allure. What made them so fascinating? The same insubstantial stuff as his fear of ghosts. Give them a few ribbons and titles and they were turned into demi-gods. He would have

agreed entirely with Thackeray that 'Majesty is made out of the wig, the high-heeled shoes and cloak. . . . Thus do barbers and cobblers make the gods we worship'.*

Other influences were far less obvious. Some were so complex and subtle that Bentham was unaware of them. He was torn between the values his father imposed and those he discovered himself. Finally he rebelled and became his own guide. Yet so powerful was his father's personality that it left its mark on almost everything he wrote. If Dr Johnson was the model for the principle of asceticism, Jeremiah Bentham sat for the principle of ipse-dixitism.†

The elder Bentham was a strong domestic autocrat. He issued commands and expected instant automatic obedience. He treated Jeremy like a robot, a brilliant and lovable one to be sure, but not as a creature with an independent will who must be placated and persuaded. He charted the boy's future in minute detail and never once consulted him about it. No one in the family challenged his authority. His son later said, 'I was a favourite, a timid child, who gave offence to nobody; and one more dutiful could not exist.'⁴¹ In 1757 a second son, appropriately named Samuel Johnson Bentham, was born and he was almost as precocious and dutiful as his older brother. Jeremiah's wife, Alicia Grove Bentham, who died in 1759, had been sweetly submissive. His mother, who thereafter managed the household until his second marriage in 1766, was made of sterner stuff, but Jeremiah Bentham was an only child and she was indulgent.

Certainly one reason why Bentham treated the usual theories of democracy contemptuously was the example of his father's family dictatorship. The early democrats based their case on natural rights which he knew only too personally was nonsense. Children have no rights. Their natural state is slavery and the smallest natural unit of government is family absolute monarchy.⁴² In 1806 he wrote:

The children of individuals constitutes [sic] a part of the property of the parents: to the parents belong what services they are able to extract and . . . think fit to extract.⁴³

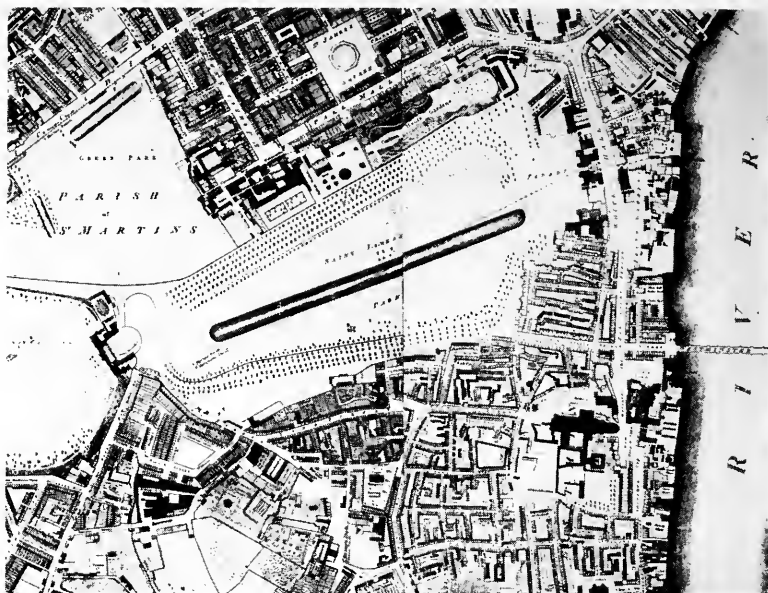
* Bentham named one of the political fallacies 'The Hobgoblin Argument, or, No Innovation!' See *The Book of Fallacies* (1808-15), II, 418ff., and IX, 83-4.

† Bentham's final name for the principle of sympathy and antipathy.



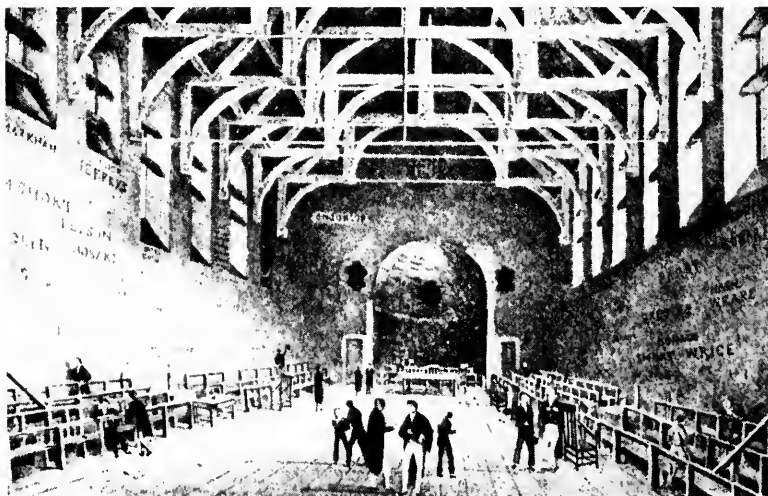
Free-Lance Photographers, Inc., New York.

The Bentham mummy or Auto-icon, as directed in his will, in its case at University College, London, with the skull by the feet.



'The Mask', 1926.

Street plan of part of St Margaret's Parish, Westminster, with Queen Square Place midway between the Houses of Parliament, Whitehall, and Buckingham Palace, and across the park from St James's Palace, 1800.



John Sergeaut, 'Annals of Westminster School'.

The main hall of Westminster School where all classes were held, upper and lower forms separated by drawn curtains.

The child is at the mercy of his parents:

on whose part every degree of caprice and tyranny, so long as it keeps clear of injuries threatening danger to life and limb, may vent itself without control.⁴⁴

Jeremiah Bentham was also a living example of the calculating hedonist. He was neither an ascetic nor a stoic, but was determined to have the best of everything at the lowest possible price. If a desirable object was also a bargain, he enjoyed it so much the more. His life was studded with minor triumphs of this kind, 'master-strokes of generalship' as Bentham sarcastically called them.⁴⁵ Not only did he drink hock and send home turtle at the Scriveners' Company dinners, but he had postponed his marriage to Alicia, a simple country girl, for several years in order to placate his mother, who had bigger ambitions. The wait was worthwhile, for Grandmother Bentham was a wealthy woman. Jeremiah Bentham later boasted that 'by the blessing of heaven on his exertions in making a combination between his wife and his mother, he was enabled to keep a country house and a carriage'.⁴⁶ Some of his master-strokes were more doubtful. To save the expense of a professional musician, he directed his law-clerk to give Jeremy violin lessons. The clerk, however, did not know how to play, and the two innocents floundered for months before they made sense of musical notation.

Even when there was nothing to be gained, Jeremiah Bentham was a scrupulous and indefatigable calculator. Whether trivial or important, he made notes of everything. His fussy regard for minutiae sometimes went to pathetic extremes. He had adored his wife. When she died he collapsed and had to be sent away for months to recuperate. First, however, he recorded:

1759, January 6. – This day died my most dearly beloved wife, and one of the best of women, Alicia Bentham, with whom I had lived in a constant and uninterrupted state of nuptial happiness thirteen years, three months, and three days, except the grief and affliction which her last illness occasioned to me.⁴⁷

Jeremiah Bentham was a Prufrock,

‘ – politic, cautious, and meticulous;
Full of high sentence, but a bit obtuse;’ . . .

The quirks of his father's character exasperated Bentham. All the same, he was his father's son and lavished the same methodical precision on his own legal analyses that Jeremiah gave to domestic accounts. It would be utterly wrong to suppose that Bentham inferred that every man is a calculating hedonist from the fact that his father was. His ethics was more prescriptive than descriptive. All men calculate but most of them do so blindly; he pleaded with them to study the consequences of their actions. Yet his father was a living proof that his pleas had facts behind them.

Jeremiah Bentham's great passion and instrument of power was money. He had a tender democratic regard for it and was as solicitous over sixpence as over £600. When young Sam, not so suavely reticent as his older brother, was hurt by one of his father's outbursts of ill-temper, Jeremy tried to soothe him with the assurance that, 'He certainly does love you and me next to his money.'⁴⁸

After his father angrily cut off his allowance at Westminster, Bentham always had to ask for what he wanted. He had to specify the sum and the purpose and, when it was spent, render a receipt. His father's notebook was full of such entries as: '1765, Dec. 3. - Lent Jerry sixpence to pay for his losses at cards',⁴⁹ or 'December 7, 1777. - *Au matin*, at son Jeremy's chambers. . . . Paid him his expenses for standing godfather to Mr Wise's eldest daughter.'⁵⁰

Jeremiah Bentham's preoccupation with money was a chronic source of misery to his son. Jeremy was an easy victim at Oxford. Once his money was stolen by the chambermaid; another time he was held by the heels upside down by a burly classmate and shaken until his pockets were empty. He dared not confess to his father. By 1763 his debts had mounted to £10, and he could hide them no longer. In anguish he turned to a distant relative, Dr Bentham, Canon of Christ Church, to intercede. The money was sent. Even after he became nominally independent in 1766, with rooms at Lincoln's Inn and an annual income of £103 from his mother's estate, he barely covered his urgent bills. Any extra expense had to be brought before his father, pleaded for, and justified. Repulsive though parsimony and begging were to him, Bentham nevertheless depended on his father financially until the old man died in 1792. They were lesser evils than the practice of law. But Bentham paid for his skimpy independence.

He was never free from his father's demands and misguided interference, and the plague of money was always with him. Jeremiah Bentham was a careful calculator because he chose to be one; Jeremy's calculations were forced upon him.

Gradually the harrassed son's involuntary concern with money led him to develop a new branch of the art-and-science of government – reward – and a major work, *The Rationale of Reward*.⁵¹ In an early preface he wrote:

When I think of how open the subject of reward may still appear after this book has done its office, my heart misgives me. But when I think how little has been said on it before, I take courage. I might stile it indeed a virgin subject. Montesquieu has but one chapter on it consisting of one page: . . . In Beccaria not a syllable.⁵²

Throughout his intellectual life Bentham considered money as the only definite measure of pleasure and pain. He would have endorsed these words fifty years after he wrote them in the 1770s:

The business of a Legislator is to augment the sum of happiness in a state, as much as possible . . . by encreasing the sum of pleasures, or diminishing that of pain. . . . Now as to pain the Legislator has many modes and these very certain in their operation. . . . With pleasure this is not the case: . . . To produce pleasure therefore the Legislator has but one means to take: which is to lay in a man's way some *instrument* of pleasure, and leave the application of it to himself.⁵³

The business of a legislator is to increase happiness. He can punish, which is certain and specific, or he can reward, which is indefinite in its effects. He can only offer men the means of pleasure or reward. Possessions are these instruments and their value is measured by money. Some possessions, like power and reputation, are fictions.

Money is also directly or indirectly a means of acquiring even these. Now then of these three possessions, Money, power, and reputation, it is only in small quantities to a few persons and on particular occasions that the two latter are at the disposal of the Legislator. . . . Money therefore is the only current possession, the only current instrument of pleasure.⁵⁴

Bentham's view that money is the measure of value did not change because the fact did not: money is by nature a quantitative value. What changed, however, was his conception of it as a value among values. While his father lived it was central. He thought the passion for it was one of the most powerful and useful drives in human nature. He endorsed government pensions, high salaries, and payment by fees as incentives to hard work. After his father died, leaving him a small fortune, he began to believe that money played an evil and far too dominant part in the operations of government. By 1799 he debated whether judges should be paid by fees or salaries. Both methods had merit. Fees were spurs to industry, and salaries to integrity.⁵⁵ Gradually he wondered whether government need pay its higher officials at all. Fame, respect, and power were immeasurable prerogatives of high office. Many people seemed to value them beyond price. What salary did Justices of the Peace and members of Parliament receive? None. Perhaps it might even be possible to persuade office-seekers to bid against competitors for the privilege. Bentham summed up his hopes as the Principle of Pecuniary Competition.⁵⁶

Profoundly as his father's fascination with money affected Bentham, he never hunted for bargains. He knew that they were often false economies, as many of his disciples did not. Joseph Hume, the financial watchdog of the House of Commons in the 1820s, was one of them. Bentham said, 'I think he confounds *low-priced* government with *cheap* government. What we want is *good* government.'⁵⁷

Some of his father's values he rejected outright. Jeremiah Bentham agreed with Dr Johnson that 'subordination is very necessary for society' and 'tends greatly to human happiness'.⁵⁸ He revered the aristocracy and had only one regret: the Benthams were not among them. He was a snob and so was his mother. She often bragged of her upbringing with a baronet's daughter, and he of his former intimacy with Sir Thomas Sewell, Master of the Rolls. Their snobbery was empty. It led to nothing. Their entire acquaintance was as inescapably middle-class as they were themselves. Bentham loathed the cringing and self-delusion their snobbery nourished.

All his father's exhortations to 'push' could not make him do so. There was nothing wilful in his resistance; he was naturally shy and hesitant. But he was ashamed of his father's fawning and

resolved never to do it himself. Nor did he. Unwittingly, Jeremiah Bentham turned the boy into something of a social Puritan and prig. Jeremy had little of his father's flexible morality and was a pink-cheeked incorruptible all his life. It was a point of honour with him always to be available to all callers on public business but never to seek favours from anyone. He was proud of his resolution. Perhaps his pride was overdone, for without temptation there is no sin.

Nor did Bentham underrate the temptation. Rationally as he might account for it by his theory of fictions, by external trappings like titles and ermine, he was far too English not to love a lord. Aristocracy enticed him as much as his father.

Conclusion: What Is and Ought To Be.

Bentham was stuffed with sentiment for breakfast. Much of it was harsh and indigestible. There was a great and growing difference between the dishes others served him and those he chose for himself. He was torn between justice and loyalty, between his father's ambitions and his own reluctance, between the lessons he was taught and those he learned for himself, between brutal facts and florid descriptions. He was passionately convinced that what *is* was not as it *ought to be*. But what ought it to be?

He did not know and was silent. He practised what he later preached: never destroy without rebuilding. The Expositor, who describes and criticizes what *is*, and the Censor, who details what *ought to be*, must always work together.⁵⁹ In 1831 he wrote:

Throughout the whole course of my labours, I believe that one rule has, with undeviating adherence, been conformed to by me – be the institution what it might, never to engage in any such attempt as that of pulling it down, but for the purpose, and with the endeavour, to raise up something that to me seemed better, in the room of it; . . .⁶⁰

In 1769 he found the answer. It was invention. Ever since he was seven he had puzzled over a question his father and Dr Markham had asked him at dinner: what is 'genius'? He told Bowring, 'A pretty question to ask a poor, raw, timid boy, a boy who knew no more about it than he knew of the inside of a man. I looked foolish and humbled, and said nothing.'⁶¹ When he was

twenty-one he read Helvétius' *De l'Esprit*. Suddenly he had an insight. 'Genius' meant invention or production, from the Latin infinitive, *gignere*, to beget or produce. Many people had called him a genius and he had done nothing to deserve it. To justify the name he must invent. 'Have I a *genius* for anything? What can I produce?' he asked.⁶² Helvétius taught him that no human enterprise was more important than creative legislation. 'And have I indeed a genius for legislation? I gave myself the answer, fearfully and tremblingly – Yes!'⁶³

Invention was, then, Bentham's road from *is* to *ought*. When this great intuition burst upon him, he began to resolve his childhood tensions by using them creatively. They were some of the stuff of his inventions.

To move smoothly from *is* to *ought*, he insisted, presupposes a complete knowledge of what is. When he took his degree in 1763 he was an unworldly fifteen-year-old child. The major part of his education was still before him. In November he began to eat his dinners at Lincoln's Inn, as his father designed. He soon learned more about the law than he cared to remember and more than he ever could forget.

CHAPTER I

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45 X, 34. 46 X, 6. 47 X, 26.

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51 II, 189-266. First published in English from the French in 1825.

52 B. 27, p. 41, 1770s.

53 *Ibid.*, p. 35.

54 *Ibid.*, p. 41. For the best of Bentham's statements on money as the measure of value, see Everett, pp. 35-6.

55 X, 336-7.

56 IX, 286ff., *The Constitutional Code*, written in the 1820s.

57 Prentice, *op. cit.*, p. 383.

58 James Boswell, *The Life of Samuel Johnson* (New York: Modern Library), p. 267.

59 I, 229, *A Fragment on Government*.

60 V, 553. 61 X, 26. 62 X, 27.

63 *Ibid.*

A Search for Certainty

*'The grand utility of the
law is certainty: . . .'*

BENTHAM

London: From Chaos to Order.

In 1766 Bentham was given freedom. His father remarried. Mrs John Abbot, a clergyman's widow, was no childlike Dora as Alicia Bentham had been, but as sharp-eyed and money-conscious as Jeremiah Bentham himself. Her two small sons, Charles* and Farr, were welcome playmates for nine-year-old Sam. With a new family to fill his house, Jeremiah Bentham chose this time to give Jeremy a measure of independence. In quick order he turned over a deed for the income of two estates, took a suite in Elm Court No. 1, Lincoln's Inn,† bought the furnishings complete for £70, transferred the boy's books from Queen Square Place to the new lodgings, and only then told him what he had done.¹ He added sententiously:

And now I have plac'd you in such a situation; surely I may claim every return that might be expected from a child for whom I have ever shewn the tenderest regard . . . and as you have every encouraging Circumstances to guide and animate your endeavours to qualify yourself for the Profession you are design'd for I hope you will make . . . good . . . use of your time.²

Though Bentham was often disconcerted by his father's abrupt strokes, this one delighted him. He had just returned to London from a walking tour in the West of England after taking his M.A. degree at Oxford, and answered at once:

* Who exactly followed the path Jeremiah Bentham laid out for Jeremy: Westminster; Christ Church, Oxford; Middle Temple; M.P. for Helston, Cornwall, through 'connections'; Speaker of the House of Commons, 1802-1816; ennobled as first Baron Colchester.

† Bentham later moved to No. 6, Old Buildings.

Your description having greatly inflamed my curiosity to taking a peep at my chambers . . . I went this evening to satisfy it. . . . I luckily found the Bedmaker in the rooms cleaning them: but if my expectation was raised by your account how much was it exceeded by the apartment itself? The elegance of the fitting up perfectly surprised me, and I could hardly forbear crying out as children do, is all *this* mine, and *this* too?³

Jeremiah Bentham need not have preached. The boy diligently continued to follow the same pattern of legal self-education that he had pursued since 1763. All aspiring barristers had to join one of the four great Inns of Court – Inner or Middle Temple, Gray's or Lincoln's Inn. The last had far the best library and the most illustrious membership – Sir Thomas More, Hale, Selden, Lord Bolingbroke, and Lord Mansfield. Centuries before, the Inns had been schools of law; in the eighteenth century they were dining and residence clubs. Like the livery companies their functions had disappeared, but their formal rituals and income remained. A 'student' ate five dinners a term in all for three years,* and once a term read the first sentence of a paper called an 'exercise'⁴ drawn up by the steward. For the rest, he was on his own. It was *laissez faire* triumphant.†

The modern system of reading in chambers with a barrister began only around 1770. Bentham plodded alone through the great forbidding statute books and case reports, despairing over *Coke upon Littleton*, Rolle's *Abridgement*, and Thomas Wood's *Institute of the Laws of England*. By far the best way to learn the law was to sit in court, watching the judges at work. Lord Mansfield, Chief Justice of the King's Bench from 1756 to 1788, knew this and always deliberately taught as well as judged. He carefully unravelled the intricacies of the cases before him and gave the reasons for his decisions. This he did, as he explained, 'for the sake of the students'.⁵ In 1763 Bentham became one of his pupils. Jeremiah Bentham gave the court crier 7s. 6d. to reserve a space for the boy on the students' bench. Year after year Bentham took his seat, fascinated by the intensified microcosm of eighteenth-century England that passed before him.

* If he was a graduate of Oxford or Cambridge; otherwise it took five years to become a 'bencher'.

† For a delightful succinct picture of the legal system in Bentham's day, see Sir F. D. Mackinnon, 'The Law and the Lawyers', *Johnson's England*, *op. cit.*, II, 287–309.

It was an abrupt change from the leafy secluded tranquillity of Lincoln's Inn, with its Inigo Jones fountain splashing in the yard, to Westminster Hall. Bentham's England was a violent, quarrelsome, anarchic, radically unstable land caught in a whirling ferment of change, and the courts were an image of it. Each day as he left his quiet rooms, turned down the Strand to Charing Cross, and then down Whitehall to Westminster Hall, he walked into chaos.

Bentham's England was London. His family was native; there he was born, lived out his life, and there he died. To many, London was a magical pageant of the best the world could offer; to others, a festering, filthy, stinking, crowded sewer. In fact it was both. Down the Strand ran rows of glittering shops, world-renowned for their huge glass windows and doors, astonishing variety of merchandise, and the deferential suavity of their proprietors. Down it as well ran a foul stream where dead cats and offal floated, spattering pedestrians and forgetful coach passengers who left their windows open. The wharves and quays leading into the Thames were open cesspools. The street paving was primitive; stones were taken directly from the quarry and laid loose on lumpy dirt beds. To cross the main streets, men jumped from one stepping-stone to another.

The dirt, wealth, and furious tempo all amazed newcomers. Even the Thames boatmen wore silk stockings, and in the mornings when mistress and maid went shopping together, each in white aprons and clacking pattens, it was hard to tell them apart. Sometimes they could scarcely be seen. As they rushed from one appointment to the next along the narrow raised causeways that served as sidewalks, the coal dust and fog were occasionally so thick that men could not be identified four steps away.

Smoke from sea-coal, the usual fuel, blanketed the city for eight months of the year. It poured not only from houses but from the hundreds of small handicraft factories that made London a great centre of luxury. The city had expanded uncontrolled and largely unzoned: there were breweries, glass-making and pottery factories, blacksmith's and gunsmith's shops everywhere.

The confusion of noises never ceased. Throughout the night the watchmen called the hours and public coaches left from the city inns, their horses' hooves clattering over the rough cobble-

stones. All day long street vendors rang hand-bells and cried their wares. They sold everything from fish to scurrilous political prints, from pots and pans to the names and statistical details of eminent whores. The overhead ornamental shop signs swung and groaned in the wind.

Apprentices had their special holidays. In April the butcher boys paraded in caps and aprons, beating time with large marrow-bones and cleavers. In May the milkmaids danced through the streets, begging presents, their skirts covered with pieces of plate. Chimney-sweeps celebrated in whitened faces and periwigs.

There were many colourful processions – the opening of Parliament, the Lord Mayor's Day, the presentation of petitions. When the City officials had a message for the government, they marched in state to Westminster. When artisans' groups had a wage grievance, they paraded to Westminster. In a moment these processions sometimes became riots. An English mob was unpredictable. It was a hard-drinking, bear-baiting, xenophobic rabble, ever conscious of its 'liberties' and ever ready to throw rotten eggs or dead dogs at unpopular ministers or foreigners. Riots were so common that visitors considered them a sight to see, something to be 'done', like Ranelagh or Mr Thrale's brewery. They sprang up everywhere, in the fields outside the city or in St James's courtyard itself. During Bentham's early years at Lincoln's Inn there was a rash of them – the Spitalfields Weavers' Riots and the Theatre Riots in 1765; the Weavers' Riots in 1767–8; the Middlesex Election Riots, the Green Riot, and the St George's Fields Riots, all in 1768; the Weavers' Riots in 1769; the Brass Crosby Riot in 1771; and the Gordon Riots in 1780.

Pastor Moritz, a German on tour in 1782, was awed but pleased to see a Westminster election mob in action:

When the whole [election] was over, the rampant spirit of liberty and the wild impatience of a genuine English mob was exhibited to perfection. In a very few minutes the whole scaffolding, benches and chairs and everything else was completely destroyed.⁶

It was a good-natured crowd as a rule but sometimes it turned violent. In 1771 a London mob of two thousand stoned a suspected informer to death.⁷ During the first Wilkes trial in 1764

people were killed in riots directly outside Guildhall where the case was heard.

There was no regular police. Whenever the mob took action government could move only between extremes. It could call out the citizens' militia, too weak a remedy to cure disorders, or it could send in the troops. But the army was a last dangerous expedient, implying civil war, and government hesitated far too long before giving orders to open fire. Meanwhile the mob raged and Bentham was frightened by it. Though always a 'people's man', he was no democrat until 1790. One reason he held off was the ever-present threat of the mob. 'The people is my Cæsar,' he said in 1775, 'I appeal from the present Cæsar to Cæsar better informed.'⁸

Nor was his caution merely a scholar's timidity. In June 1780 the government ordered him to carry arms during the Gordon Riots. When his service was over he wrote his brother Sam in amazement:

Who would have thought, my dear Sam, that I should have had to date my letter from such a scene of desolation. Will you believe your own eyes when I tell you that London is in the condition of a besieged town. If I open the window I see two fires before me at a view: one is the King's Bench prison, the other is somewhere to eastward. . . .

The public prints will inform you of the outrages committed here for some days past by the anti-catholic mob set on by Lord George Gordon. . . . Newgate is in flames while I am writing; . . . While I was at dinner today at my fathers came a card from the Duke of Northumberland desiring his attendance 'on business of the utmost importance' in the most pressing terms. The soldiers are not yet permitted to fire. The mob attack them with impunity and take their bayonets from them.⁹

Later he added a postscript, 'I was a military hero for a night, patrolling the streets under arms.'¹⁰

Uncertainty was a brutal fact of life in eighteenth-century England. Riots were but one of the causes. Housing was another. It was an age of non-inspection. Builders threw up ramshackle, airless, damp warrens in back alleys and built them to last only as long as their lease. The workmen made bricks on the spot, of foundation dirt, ashes, excrement, and anything else at hand. To Dr Johnson London was a place where 'falling houses thunder on your head'.¹¹ As there was no professional police, neither was

there a general fire department. Though insurance companies often kept private hose brigades, they could not begin to control the fierce fires that often devastated whole areas of decrepit tenements.

The people who herded together in these filthy fragile rookeries were wanderers. Most of them paid by the week for furnished rooms. Many came down from the northern counties or Ireland, eager and healthy, and many of them died in London, broken and unnoticed. Their diet was execrable, with little fresh meat and fruit. Unscrupulous bakers extended their bread-flour with dust. Gin was a staple before the trade was brought under effective control in the 1750s and thousands of people drank themselves to death. A man had to be tough to survive unscarred in London. He might be abducted by a press gang, imprisoned for debt, or ruined by losses in the state lotteries. Epidemics of influenza and cholera swept through the city. During the famous Old Bailey session of May 1750 the entire court was infected with jail-fever. Forty judges and counsel alone died.¹² In bad harvest years like 1756 and 1766 people died of hunger. Epidemics were so common and life so precarious, it was often said that there was no third generation of true Londoners. Bentham was one of these rare people.

The whole London economy was radically uncertain. It was a city of seasonal, luxury, and service trades with two centres, the docks and Westminster Hall. It was a great port and the hub of government. Good or bad winds affected the lives of thousands of sailors. When Parliament met each year the entire city swung into gear. The tailors, watch-makers, jewellers, shoe-makers, printers, and wine merchants took on extra help. At the height of the season they worked a frenzied fourteen- or fifteen-hour day. When members of Parliament left for their country seats after the session, however, thousands were thrown out of work.

This was Bentham's London, and his London was his England and his universe. From his disturbed view of it he drew his great ambition: to bring order into a world of chaos. He never felt the full impact of the Industrial Revolution, though he lived into the Early Railway Age,* because it did not hit London. The great population explosions and expansions of the factory system took place in the north. London remained what it had been: the home of small workshops and the domestic system.¹³ Bentham saw few

* Sir John Clapham's phrase.

of the baleful effects of overcrowding and overwork in factories where everything went, as the visiting Pasha said, 'Whizz! Whizz! All by wheels! Whirr! Whirr! All by steam!'¹⁴

But he saw hundreds of other revolutionary changes. If he believed in progress, the evidence for it was all around him. In his lifetime the city and its inhabitants were transformed. By the turn of the century London had changed from a dark, dirty, and chaotic hive to probably the best lighted, best paved, and most orderly city in the world.

In 1750 Westminster Bridge was opened for traffic; in 1757 London Bridge was widened; in 1769 Blackfriars Bridge was completed. In each case the pestilential slums that cluttered the waterfront were demolished and built over. The important Westminster Paving Act was passed in 1762. For the first time street paving, lighting, and repairing, garbage collection, sewers, and drains were no longer considered private matters. Each householder, for example, now had to put up two lamps. Under the Act standards were set and commissioners appointed and authorized to enforce them.¹⁵ Other areas of the city took their cue from Westminster.

There was an enormous building boom. The city expanded for miles east and west. For the first time streets were laid out in straight lines on a grid plan. Between 1750 and 1765 perhaps 20,000 new buildings arose.¹⁶ Smollett's Matt Bramble was astonished to revisit London. 'What I left open fields, producing hay and corn,' he exclaimed, 'I now find covered with streets and squares, and palaces and churches.'¹⁷ Horace Walpole wrote in 1776, 'Rows of houses shoot out every way like a polypus.'¹⁸ The people who lived in these new neat rows of brick houses were a different breed from previous Londoners: cleaner, better fed, healthier, more sober, more civilized. It was the beginning of a new humanitarian age, and Bentham eventually drew the democratic political implications.

There was a great increase in washable cotton clothing, fresh vegetables and meat, sugar, tea, soap, and candles. By 1797 there were 1600 friendly societies in the London area. The anti-gin Acts had slowly done their work. The former evil trading Justice evolved into the impartial paid police magistrate. Methodism and Evangelicalism flourished and, with them, private charities of all kinds – schools, almshouses, dispensaries, fever and maternity hospitals. The new compassion took

hundreds of practical shapes. In Bentham's parish of St Margaret's, Westminster, alone, there were three charity and free schools besides Westminster, two children's hospitals, and seventy-four almshouses.¹⁹

The Law: A Labyrinth.

Every time that Bentham walked through the Strand to Westminster Hall, he was faced with an overwhelming irony. He had been taught and he sincerely wanted to believe Dr Johnson's maxim, 'The law is the last result of human wisdom acting upon human experience for the benefit of the public.' Yet wherever he looked he saw experience running far ahead of the courts' efforts to direct it. Law is the overriding instrument of social regulation and 'the grand utility of the law is certainty'.²⁰ Yet eighteenth-century English society was remaking itself with almost no help from the law. From year to year subordinate areas of social life became more and more regular and certain while the law itself became more irrational and insecure.

Once again Bentham was torn between loyalty and justice. The law was not what it was said to be; neither was it what it ought to be. Able to tolerate its chaos and uncertainty no longer, he dedicated himself to reform. In the 1770s he described his despair and resolution in an 'Historia Operes':

Destined by education to . . . the study of the English law . . . I entered upon the task. I had been taught to believe both in print and in conversation that it is in [its] . . . several parts as beneficial to the people as the whole together is profitable to those who study it as a profession: that it is as near to perfection as any thing can be that is human; that if it has any imperfections, they are like spots in the sun, absorbed in the splendour of superior beauties. As I advanced every page I read seemed to furnish an exception to those general rules; till at last I began to be almost at a loss to conjecture upon what particular observations could have given occasion to these magnificent positions. . . . I saw crimes of the most pernicious nature pass unheeded by the law: acts of no importance put in point of punishment upon a level with the most baneful crimes: punishments inflicted without measure and without choice: satisfaction denied for the most crying injuries: the doors of justice barred against a great majority of the people by the weight of wanton and unnecessary expense: false conclusions ensured in most questions of fact by hasty and inconsistent rules of evidence: light shut out from every question of fact by fantastic and ill

consider'd rules of evidence: the business of hours spun out into years: impunity extended to acknowledged guilt and compensation snatched out of the hands of injured innocence by . . . impertinent & inscrutable exemption: the measure of decision in many cases unformed: in others locked up and made the object of a monopoly: the various rights and duties of the various classes of mankind jumbled together into one immense and unsorted heap: men ruined for not knowing what they are neither enabled nor permitted even to learn: and the whole fabric of jurisprudence a labyrinth without a clew. These were some of the abominations which presented themselves to my view. . . . From the view . . . I confess resulted a passionate desire of seeing them done away. It soon appeared that to cleanse the Augean stable to any purpose there was no other way than to pour in a body of severe and steady criticism and to spread it over the whole extent of the subject in one comprehensive unbroken tide. This I determined to attempt . . . and whatever might be the success, it seemed that the labour of a life, as of a thousand more if I had them would not be ill bestow'd in the endeavour.²¹

The law was a labyrinth but there were clues. Those who held them were a small medieval cabbala with an elaborate mystique and a private vocabulary that uninitiates could not understand. When Bentham discovered the principle of utility and became a reformer, a new language of law was his first object. Again and again he insisted:

Few persons know how much technical terms have contributed to conceal errors, to mask quackery, to confine the science to a small number of adepts who have made of it a species of monopoly. The knowledge of this jargon has become a cabalistic sign, by which the initiated recognize each other.²²

The courts were one national system. They met for four three-week terms a year at Westminster Hall; between times they dispersed through the six county circuits to hear and try local cases. The three common law courts, King's Bench, Common Pleas, and Exchequer, each had a Chief Justice and three puisne judges. Doctors' Commons and the Court of Chancery supplemented the common law system, administering ecclesiastical law and equity. The law of equity had grown to fill the gaps in common law. It was a futile effort to meet changing social conditions, for by the eighteenth century it had become even more tortuously unintelligible than its forerunner. Presiding

over it were the Lord Chancellor, the highest law officer of the Crown, and his assistant, the Master of the Rolls. Doctors' Commons had one judge. There were altogether only fifteen judges to oversee the whole massive, complex, time-worn accumulation of English law. Under them were fewer than 350 barristers.²³ These few men, together with their attorneys and conveyancers, alone knew the mystery.

The average citizen was helpless. When he wished to file charges he had to deliver himself over to an attorney, who then began the elaborate series of written pleadings necessary before a specific issue of fact could be determined. Eventually, after an indefinite number of Declarations, Pleas, Replications, Rejoinders, Surrejoinders, Rebutters, and Surrebutters, an issue might be agreed upon and presented by a barrister to a jury. At any stage the case could be sunk by bad drafting. The business of pleadings could take years and thousands of pages of records proliferate at two guineas each.

So much for written pleadings. At the trial, prisoners for felony were denied counsel and neither plaintiff nor defendant could be witnesses or give evidence.²⁴

This was the procedure at common law. Chancery was worse. In the common law courts, at least, an issue was tried orally before a judge and jury. In Chancery everything was done by written depositions; the entire personnel were paid by fees. There were no cross-examinations and no jury trials. The Lord Chancellor or the Master of the Rolls decided all cases.

Even the most dedicated and tireless professional could not know all the law. He might be familiar with common or statute law or equity but he could never master the whole maze. Lord Thurlow, Chancellor from 1778 to 1792, admitted he was baffled, 'I should be ashamed of myself if I was not accurately acquainted with the common law, but as to your damned Statute-book it is impossible to be acquainted with it.'²⁵ Even when a judge knew the common law thoroughly he was not always certain whether to apply it. 'My dear Garrick,' Lord Mansfield once said, 'a judge on the bench is now and then in your whimsical situation between tragedy and comedy; inclination drawing one way, and a long string of precedents the other.'²⁶

The clue to the labyrinth, faint as it might be, was dogged hard work. It took years of dreary study to master each branch of the

law. Once a man had conquered it he had a vested interest in keeping it as unapproachable as possible. During the entire century there was only one important legal reform and that was the substitution of English for Latin in 1730. Even so, members of the fraternity were still wringing their hands over it fifty years later. They were not all as intransigent reactionaries as Serjeant Hill, leader of the Midland circuit around 1780, who wanted to repeal every statute and burn every case report that had been made since 1688. But on the whole their careers depended on the monumental incomprehensibility of the law and they sympathized with the notorious Scottish judge, Lord Braxfield. In a trial for sedition one of the accused pleaded, 'Even our Lord was a reformer.' From the bench came a sharp, 'Muckle he made o' that, he was hanget.'²⁷

The law was also a stronghold of *laissez faire*. Here is another Benthamic irony. He has often been named one of the fathers of *laissez faire*, yet he fought a never-ending war against it. His critics do not make the valuable distinction between internal or political and external or economic *laissez faire*. Bentham was not the radical state interventionist in economics that he was in other areas of social life because he felt that manufacturers knew more about finance and industry than members of Parliament. And so they did. The government in Bentham's England had almost no fact-finding machinery and most of the members of Parliament were ignorant dilettantes in economics.

Again, society moved faster than the law. Bentham lived in an age of the end of *laissez faire*. The anarchy of local government by parishes was coming to an end as people began to realize that many of the improvements in paving, lighting, and police protection they wanted to make required group co-operation and public inspection. The apprenticeship system, another medieval survival, was also discredited. Case after case of starved, beaten, and murdered apprentices, victims of brutal masters, came to light and public opinion began to consider such uncontrolled private power intolerable. In 1814 the 1563 Statute of Apprentices was repealed. The Industrial Revolution itself changed the relationship of employer and employee. When large groups of people were brought together in factories, they could easily be inspected and regulated.

In the law, however, the medieval system was entrenched and invulnerable. Not only were many of the laws archaic, like

the wager of battle by which Abraham Thornton escaped hanging in 1818, but common law and equity were judge-made law, though no judge would have admitted it. According to constitutional mythology, the judge's job was not to decide a case on its merits but merely to apply the relevant precedents. Where these were obvious he used them. Usually, however, they were not, and he bent and stretched them as his inclination and intelligence directed. As the tempo of British life grew faster and faster, he often met entirely new kinds of cases and he made his own law to fit them. In this way Lord Mansfield single-handedly created a code of commercial law. He kept a 'special' jury of businessmen permanently on call to try commercial cases. Their mutual understanding was complete and his authority was absolute.

The power of judges in Bentham's England was final and unassailable. The ultimate court of appeal was the House of Lords, but since the Lord Chancellor was also Speaker of the House, he usually appealed from himself to himself. According to the stock theory of a mixed constitution, composed of the legislature, judiciary, and the executive, the legislature made the laws and was supreme. In fact, as Bentham said:

as often as a proposition . . . is presented to the legislature, a question put at the outset is, Has it the approbation of the gentlemen of the long robe? If silence, or an answer in the negative, is the result, down drops the proposition dead-born.²⁸

Indirectly, then, statute law as well as common law and equity was often made by the judges. They were in fact responsible only to themselves, and their practice of *laissez faire* was sweeping. The system of payment by fees was a perfect instrument for unaccountable manipulations of power. Using it a judge could punish or reward his subordinates as he pleased. Juries were another fine opportunity. They could be and often were packed to deliver the verdict a judge predetermined.

Nor were the judges the sole practitioners of *laissez faire* within the system. The power of pardon was reserved for George III and he often used it. Since a suit could be immediately dismissed for the slightest paper error, any draftsman could irresponsibly control a suitor's destinies. For that matter, any criminal with enough money to bribe could act as his own legislator. Accord-

ing to Bentham, the proper exclusive source of legislative authority should be Parliament. Yet even when Parliament did declare itself, its will was easily frustrated.

Nor had the judges kept within their own jurisdictions. Originally the three common law courts had had separate fields of competence and more or less equal rank. Exchequer had dealt with crown revenues and taxes; Common Pleas, with private actions between citizens; and King's Bench, largely with criminal cases. Gradually they began to fight for pride of place and made forays into each other's territories. In Bentham's time all the courts handled the same kinds of cases.

The legal fiction was their device for extending jurisdiction. A fiction in law is a falsehood, often deliberately invoked to incorporate a new kind of case under an old rule. As Bentham said, 'What a *hatchet* is to the Russian peasant, *fiction* is to the English lawyer – an instrument of all work.'²⁹ The King's Bench, for example, began to try civil cases by adopting the fiction that the defendant was in the custody of the Marshal of the court.

The law was riddled with fictions. Husbands and wives were considered one person. Everyone was assumed to know the law, though it had been written in Latin until 1730. In property disputes under the ancient writ of ejectment, the law conjured up the imaginary characters John Doe and Richard Roe, who were presumably replaced in possession by the defendant. It claimed that ships were floating islands and that ambassadors' houses were beyond the territorial limits of the country where they were built. Two pervasive fictions of criminal law held that the King is plaintiff in every case and that all pleas are heard before him in person. Bentham called them 'these Chimeras, the spawn of Ignorance and Pedantry'.³⁰ One of the platitudes of constitutional law annoyed him particularly. When James II fled from England in 1688 Parliament declared his 'abdication'. Yet as Bentham often said, 'not a particle of his power was it the wish of James to abdicate . . . but to increase it to a maximum, was the manifest object of all his efforts.'³¹

The law described a topsy-turvy world in which what was not was said to be and what was, was denied. The results were often absurd and added to the law's uncertainty, for its hypocrisy weakened its moral force and people mocked it. All the same, fictions were one of the law's ways of adapting itself in all its slow and venerable bulk to social change. But its efforts to make

insecurities certain were self-defeating; it became ever more uncertain.

The law was a cruel lottery. It found a new way to adjust to social change. No more fictions were created, nor did the law grow worse in new directions. It remained throughout Bentham's life much as it had been for centuries: a gigantic labyrinth. But suddenly there was much more of it.

Traditionally, Parliament did relatively little. It met, it approved the civil list, it renewed the annual acts regulating the army and navy. Beginning with the reign of George III, however, Parliament became very busy and added unprecedented numbers of new acts to the already impenetrable masses of legal literature. The most condensed version of the statutes from Magna Carta to 1760 filled seven and a half volumes. So much new law was enacted between 1760 and 1830 that it filled thirty-one and a half volumes.³²

This swollen bulk was Parliament's way of meeting the challenge of social change. Much of it could have been avoided. The art of general legislation was not understood and most of the acts were passed for particular individuals or applied locally or temporarily. There were thousands of acts regulating land enclosures, almost a thousand controlling woollen manufacture and the fisheries, almost five hundred on the use of tobacco and the treatment of the poor, and a dozen on the packing of butter. The more the law swelled, the more uncertain it became.

Among the laws that grew dizzily were those issuing in death penalties. In 1700 there had been fifty capital offences. By 1800 there were between two hundred and twenty and two hundred and thirty. Many members of Parliament were frightened by the speed of social change and insisted that the growing national wealth led to a great increase in crime. In that ill-organized age, they became panicky and shouted for retribution instead of prevention. They passed bills invoking the death penalty for forgery, poaching, shoplifting, stealing turnips, damaging fishponds, and associating with gipsies.

Nor were they squeamish about providing object lessons in the consequences of crime. When Bentham was young roadside gibbets were common sights. The fully clothed and bewigged figures that dangled from them were constant grim reminders of the precariousness of human life. Even in Oxford there was a 'Gownsmen's Gallows' in Holywell Street and not long before

Bentham's time two undergraduates had swung there for highway robbery.³³ At Temple Bar in London the heads of three ringleaders of the '45 rebellion were raised on poles twenty feet high. It was a common superstition that their fall would presage a great political event. At George II's death in 1760 one of the heads fell down.

The criminal code soared in a bloody, vindictive, and futile spiral. The more brutal it became, the less it could be enforced. Juries refused to convict for trivial offences and took to 'pious perjury'.* They regularly undervalued stolen property because thefts over 40/- were punishable with death. Even the judges were sympathetic. In Lord Mansfield's court the prosecutor once indignantly objected to the jury's assessment, 'Under forty shillings, my Lord! Why the *fashion*, alone, cost . . . more than double the sum.' Lord Mansfield calmly observed, 'God forbid, gentlemen, we should hang a man for *fashion's* sake!' ³⁴ If the juries did not quash the sentence, often the judges or the King did, either by strict interpretation or the power of pardon.

In London and Middlesex from 1749 to 1758, two out of three convicted offenders were executed. By 1810 the ratio had shrunk to one in ten. In 1819 Sir Thomas Fowell Buxton made a famous maiden speech on law reform in Parliament. In it he estimated the odds:

It is five to one he [an offender] will not be detected; fifty to one he will not be prosecuted; one hundred to one he will not be convicted, and one thousand to one that the sentence pronounced by the law will never be carried into effect.³⁵

He gave some figures for 1817: although 31,180 forged bank-notes were detected, only 142 persons were prosecuted; 62 capitally convicted; and 14 executed.³⁶

Finally, the law was a mirror of social power. It was made by men with money for men with money. Under the fee system a poor man was barred from the courts. The proliferation of capital offences was one way of illustrating Locke's doctrine that the chief end of society is the preservation of property.† Most of the new acts were aimed at economic offences, and burglaries, forgeries, and robberies were prosecuted more rigorously than

* Blackstone's phrase.

† This, at least, is the way Bentham interpreted Locke.

any other crimes. In 1785 there were 64 executions. One was for murder. All the others were for offences against property.³⁷ Between 1710 and 1714 no one was convicted and executed for forgery. In 1800 26 men were convicted and 15 were executed.³⁸

A mysterious cabbala, a stronghold of *laissez faire*, a lottery, a mirror of moneyed interests: these were the law. The invention of fictions, the absent-minded multiplication of statute law, the vindictive proliferation of death punishments and consequent refusal to enforce them: by these haphazard means the law met social change. But there was still another way that ruling members of society adjusted to their insecure scene. They turned their faces and pretended that a glowing false portrait was a true one. In 1765 Blackstone published the first volume of his *Commentaries on the Laws of England*. For the first time the law found a golden-tongued panegyrist and almost overnight his 'aggressive optimism'³⁹ became the standard response of the upper classes. The law as Blackstone described it was remote from the facts, but people eagerly accepted his complacent picture and used it to reject any criticism of the *status quo*. When Bentham died in 1832, the law was essentially the same archaic mass it had been when he was born, for the illusions spread by the *Commentaries* still triumphed.

Blackstone and Dr Johnson upheld the *status quo* in the same way: the fictions of the constitution are very pretty things; if the actual facts are ugly, so much the worse for them. Blackstone disarmingly admitted the gap between the facts and his descriptions. He spoke, for example, of voting qualifications. Almost every free agent in England, he claimed, had a vote. In an age when votes were freely bought and sold, he knew this was nonsense and therefore added that such at least was the *spirit* if not the letter of the constitution.

The candid and intelligent reader will apply this observation to many other parts of the work before him, wherein the constitution of our laws and government are represented as nearly approaching perfection; without descending to the invidious task of pointing out such deviations and corruptions, as length of time and a loose state of national morals have too great a tendency to produce.⁴⁰

These sophistries never deceived Bentham, who had nothing but contempt for them. In a way Blackstone forced Bentham's

career as a legal reformer upon him, for the law never had a more eloquent eulogist and therefore never more urgently needed a passionately determined critic. In Bentham it found one. In December 1763 he returned to Oxford to hear Blackstone deliver the lectures that became the *Commentaries*. He tried to take notes but was soon distracted and confused by the many fallacies.⁴¹ Though six years went by before he began to work out a Utilitarian rationale of law, he sensed at once how powerful an ally the enemies of reform had found.⁴² The *Commentaries* were an impressive verbal fortress; the most flagrant abuses could be and were defended behind it.

Bentham fought an unending war with Blackstone. Some of his earliest writings were critical attacks, and so were some of his last. His first published book, *A Fragment on Government* (1776), was an exhaustive scathing analysis of a few pages of the *Commentaries*, the section on 'Law Municipal' in the Introduction, where Blackstone digressed on the origin and forms of government. Bentham planned to subject all four books to the same point-by-point denunciation, but his stamina gave out long before he finished.*

Nevertheless in hundreds of unpublished pages he kept up a less systematic crossfire. In *Juries*, a long work written in 1790 for the French National Assembly, he condemned Blackstone's defence of them as preventives of aristocratic monopoly in government. In *Church-Influence*, projected in 1812, he showed the unreality of Blackstone's description of governmental checks and balances, borrowed from Montesquieu. At the same time he criticized Blackstone's view of the uses of 'influence', that great eighteenth-century political oil which kept the wheels of government rolling. Finally in 1828 Bentham wrote another unfinished work, *A Familiar View of Blackstone: or say Blackstone Familiarized*. Like Archdeacon Paley, Blackstone hailed what Bentham sought to destroy, 'the glorious uncertainty of the law'.⁴³

One question arched over all Bentham's particular dissatisfactions with constitutional eulogies. If the law could be justified only by legal fictions, by deliberate falsehoods, was it worth defending? His hatred of lies, a grand passion animating his whole career, began personally, when he signed the Thirty-

* In 1928 Professor Everett published another part, *Comment on the Commentaries*.

nine Articles, but it grew large and impersonal, when he realized that veracity is the moral foundation of good government. In the Court of King's Bench he discovered that every statement depended directly or indirectly on falsehoods and these not furtively concealed but openly flaunted. The structure of law was a tissue of fictions: to Blackstone it was beautiful; to Bentham it was rotten through and through.

As early as *A Fragment on Government* he denounced 'the pestilential breath of Fiction [which] poisons the sense of every instrument it comes near'.⁴⁴ In 1809 his cup of disgust ran over:

'Swearing,' says one of the characters in a French drama, 'constitutes the groundwork of English conversation: lying, he might have said without any such hyperbola, lying and nonsense compose the groundwork of English judicature. In *Rome-bred* law in general . . . fiction is a wart, which here and there deforms the face of justice: in English law, fiction is a syphillis, which runs in every vein, and carries into every part of the system the principle of rottenness.'⁴⁵

Bentham's first demand was a straightforward clear description of facts. He found none, neither in the law nor in any commentaries on it. Though he admitted that Blackstone was the 'first of all institutional writers, [who] has taught Jurisprudence to speak the language of the Scholar and the Gentleman',⁴⁶ his very felicities of style were an added evil because they hid the horrors of the law. His merits were great relative only to other writers, for if Bentham thought some parts of the *Commentaries* untrue, he found others completely unintelligible.

A man must catch at words or catch at nothing. If something in point of sense were said, were that something false, one might sit down seriously and quietly to examine: but the great grievance is to find nothing said in so many words, and that vexation occurring at every step: so that the greatest part of what is said is just so much worse than nothing. His definitions strings of identical propositions or explaining *ignotum per ignotius*. His nomenclature like a weather cock: you never meet with the same terms twice together in the same place.⁴⁷

Here was one origin of Bentham's logic of the will, his central and most original gift to the history of thought. For law is an expression of will. If the language it uses is ambiguous or unsettled, it can neither be understood nor obeyed. Bentham's new

logic was his response to the chaotic uncertainties of the law, and his first step was to create a dictionary of the legal vocabulary. In his logic the first subordinate end of government, after the general greatest happiness principle, is security. Bentham was dissatisfied with the law as it was and as it was said to be. What, then, ought it to be? It must first of all be made certain. It must become a logic of the will.*

As such an instrument of security, what might the law do? Bentham's imagination soared and his starting-point was the contrast he saw every day on his walk to Westminster Hall. In the streets there were signs of progress and growing certainty everywhere; the courts were centres of reaction and uncertainty. The disparity seemed tragic to him. Law had carried man from barbarism and was now itself lapsing into it. There were three ages of law. In the first, law marched with public opinion and inflicted the vengeance that primitive people demanded. In the second, law moved ahead and administered punishment impersonally and impartially while the people still cried for blood. English law had long been in this second stage but now it was reverting as public opinion surged forward. The third age was yet to be, an Age of Prevention when the law should foresee and intercept the conditions that lead to crime.⁴⁸

In the fifty years between 1750 and 1800 the roles of law and public opinion seemed to be reversed. The cruelty of the English mob had been notorious among foreign visitors, who were shocked by the drunkenness, street fights, cock-fighting, bear-baiting, and the eight annual 'hanging holidays' when all London shops closed so that their employees could flock to Tyburn. They were, on the other hand, impressed with the fairness of English trials and the moral authority the courts exercised. By 1800, however, the people had become more civilized and the law more cruel. The law no longer led public opinion. Its authority was sapped by its uncertainty. It was Bentham's ambition to re-establish the leadership of the law over public opinion by making it certain, and to move it forward into the untried and limitless Age of Prevention.

Why is the logic of the will the centre of Bentham's thought? Why did he dedicate his entire life to law reform? It was not only that the law was in fact bad, nor that descriptions of it were so idealized, nor that he went to school for so many years to the

* See Chapter 4 below.

Court of King's Bench and learned the lesson of the evils of uncertainty a thousand times over. Added to these was a vastly exalted view of legal possibilities. For Bentham, simply, the law is everything. It regulates all we do, all we can do, and all we shall do. We are what the laws have made us. The law is the human way of arranging group relationships and carrying them into the future. There is no human act that it does not directly or remotely oversee. Each of us has a name and the law guarantees it; babies are fed and the law seconds it; we are born, clothed, housed, educated, employed, married, prayed over, and buried under the eye of the law.

An acute sense of time courses through his definition. Animals live from moment to moment, unable to control their future. Law is the specifically human way of recognizing, using, and subduing time. Its victory is security.

True it is, that all laws, all political institutions, are essentially dispositions for the future; and the professed object of them is to afford a steady and permanent security to the interests of mankind.⁴⁹

Bentham was a radical reformer but he was never an anarchist. On the contrary. His reforms were aimed at making the uncertain more secure. He always preached obedience.

Bad as the law is, and badly as it is made, it is the tie that holds society together. Were it ten times as bad, if possible, it would still be better than none: obey it we must, or everything we hold dear would be at an end.⁵⁰

In an early plan for an Indian legal code, Bentham wrote a glowing exordium, 'On the Excellence of the Laws'.

The law is every man's best friend: to her under God he is indebted for every thing that is dear to him. To her he owes every thing which he enjoys: whatever protection he has for his peace of mind, his person, or his honour. To her the rich man owes his wealth; the poor man his subsistence; every man who is free, his freedom.⁵¹

Law was central in Bentham's system of ideas. For an empiricist it could not have been otherwise, for eighteenth-century English life revolved in fact around the law. He observed and

drew his own conclusions. He saw how intertwined the functions of government were. The judges legislated as well as judged. Not only was the Lord Chancellor Speaker of the House of Lords, but all the judges sat in the Lords. Crown counsel were usually members of Parliament, combining administrative and legislative roles. Though it was unconstitutional, judges were sometimes Cabinet members. In 1757 Lord Mansfield was Chancellor of the Exchequer for three months as well as Lord Chief Justice. Even after he surrendered the seals he remained in the Cabinet. In 1770 after Yorke, the Chancellor, committed suicide, Mansfield became Speaker of the House and the official government spokesman for some months. The large state trials were national pageants. Probably every literate person in the country disputed Warren Hastings' guilt or innocence. The English were moreover a very litigious people. Property was a national religion and the courts were its church. It is significant, too, that the courts and Parliament met in connecting buildings, and public attention focused on them together.

Bentham's political theory began with description of the law as it was. First he defined power and then he tried to locate it. He found it in the courts, exercised by the judges.

In the formation of the English system of judicature, the judicial has ever been the active, – the ordinarily-operative power; that of the monarch, with the rest of the parliament, the controuling only; . . .⁵²

And so it was in fact. His political theory has often been dismissed as inadequate under twentieth-century conditions. It is – but not for the faults assigned to it. To men like Schumpeter, his theory of democracy is doomed for its superficial psychology: Bentham knew nothing of the depths of mass irrationality. But his political theory did not depend on an independent psychology. It grew out of his observations in the King's Bench. If his analyses are no longer so relevant as they once were, it is because the nature and location of political power have changed. In our society the 'ordinarily-operative power' is where Bentham wanted to see it – in the legislature. The courts are no longer so active as they were when he wrote. Nor did he live in our modern administrative state where so much power is exercised quasi-judicially. He was working with facts, and they have changed. He is therefore in some ways outmoded.

In the same way, and it cannot be said often enough, most of Bentham's theories arose from his criticism of the law. Because he was appalled by the terrible practical effects of legal fictions, he developed a theory of language. Because the law tacitly assumed many propositions about human behaviour that seemed to him superficial or false, he drew up an alternative psychology and theory of ethics. The law, for example, knew little about motives.⁵³ Bentham borrowed his vocabulary from Blackstone himself.⁵⁴ Even his religious opinions were legally oriented. He was disturbed by the political control exercised by the Establishment in Doctors' Commons and the House of Lords. This is fundamental. No one who does not recognize that Bentham's thought grew out of his legal preoccupations will ever see him whole.

Even his discussions of more strictly philosophical questions were legally oriented. Sometimes they were cavalier and superficial; at other times they were profoundly interesting; but he never began them for their own sake. They always arose in a legal context. His explanations of causation, freedom of the will, belief, and probability followed upon his analysis of circumstantial evidence.⁵⁵ How should we estimate improbability and impossibility?

We see that some events conform. Calling this conformity an 'effect', we look for a 'cause', and this we name a 'law of nature'. Laws are indeed causes of conformity. They are commands, man-made instruments of security that guarantee expectations. But they refer to certain kinds of human actions and not to the course of nature in general. By pointing out this misapplied analogy from legislation, Bentham thought he had neatly exposed some conventional philosophical issues as mere linguistic confusions.⁵⁶

He wrote for the judge, who must learn to evaluate intangible psychological facts as well as concrete physical ones. May a judge, he asked, rule out any psychological facts as impossible? In answer, he defined 'freedom of the will'. He admitted that the consciousness of it was something most of us feel. Therefore it is the judge's business to account for it. According to Bentham, it is the same kind of verbal cover for ignorance about psychological events as 'law of nature' is for physical events. In the same way we reify other psychological attributes: necessity, impossibility, certainty, uncertainty, probability. They are all instances:

of a false conception of power, growing out of impotence. . . . The only sort of fact of which they are really and truly indicative, is the disposition of our mind . . . to be persuaded, with a greater or less degree of assurance, concerning their existence or non-existence.⁵⁷

Bentham became a radical reformer reluctantly and conservatively. Until about 1781 he clung to the remote hope that the courts would reform themselves. As each year passed he became more and more discouraged. He first discovered the principle of utility in 1768. Until then he had been a silent rebel, for though he knew what was wrong with the law, he had as yet no better alternative to offer. Now he had an exhilarating vision and he was eager to persuade others to share it. If the first condition of happiness is security, law must fix the grounds of expectation. The vocabulary must be defined. Its expressions of will must be written and codified. All common or judge-made law must be converted into statute law. Fees should be abolished. Judgments should be made swiftly. Punishments must be certain and proportionate to crime.

The Great Lord Mansfield.

In his new bright enthusiasm whom did Bentham expect to persuade? Lord Mansfield himself. Many years later he was astonished at his own naïvete. How could he ever have supposed that a man who had everything to gain from legal chaos should wish to clear it up? How could he have imagined that William Murray, who had won unrivalled power and honour through the law, would willingly sacrifice them?

Yet Bentham's hope was not so quixotic as it later seemed. His father was right. Without 'connections' he was nothing. He needed a patron and he judged that no one in England was a more brilliant, powerful, sympathetic, and likely candidate than Lord Mansfield. Nor was anyone.

He bewitched Bentham as he bewitched everyone, friends and enemies alike. Born in 1705, he had gone through the same educational programme as Bentham: Westminster, Oxford, and Lincoln's Inn. He met and conquered Alexander Pope while he was still at Westminster and soon became his great favourite. Pope came often to his rooms at Lincoln's Inn, fascinated by his bottomless erudition, glorious silvery-toned voice, perfect urbanity, and good humour; his bland open face that could

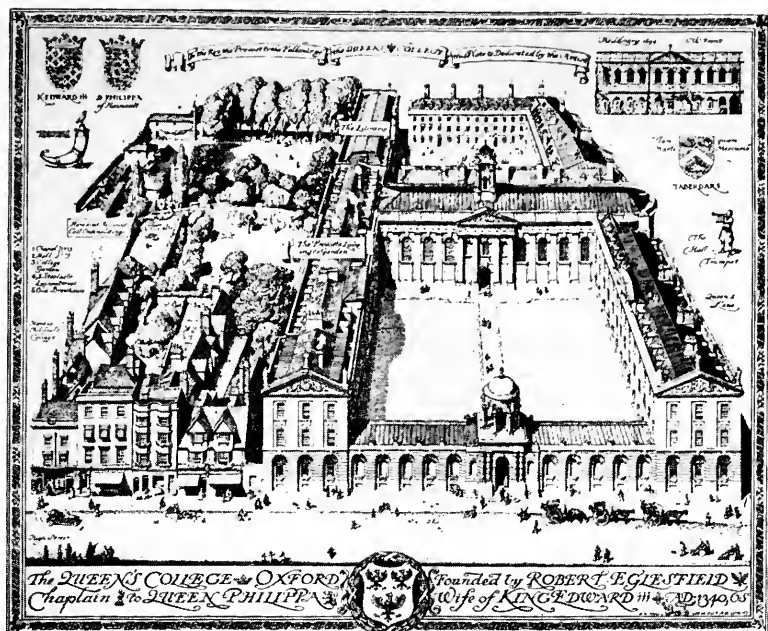
become very eloquent; his powerful self-control; and his alternate command of wit, logic, and rhetoric.⁵⁸

In 1756 he became Lord Chief Justice of the King's Bench; in 1788 he resigned. During these thirty-two years his judgment was so revered that he carried the court with him unanimously in all but two cases and had his opinion reversed in only two others.⁵⁹ This was all the more remarkable because he was an unwavering Tory while many of the barristers who pleaded before him, like Dunning and Erskine, were firm Whigs. Soon after he became Chief Justice he became popularly known as 'The Great Lord Mansfield'. His career was a perfect example of judicial free enterprise. What a judge made of his office was bounded only by his talents and ambitions. Lord Mansfield had a staggering amount of both and soon became one of the most celebrated men in the kingdom. His court was thronged whenever he handed down an important decision. Newspapers reported his addresses to juries, to satisfy a public interest no other judge aroused. The business of the other common law courts shrank alarmingly as more and more people chose to have their cases tried before him.

Nor was the King's Bench the only source of his authority. He had his seat in the Lords and, for many years, membership in the Cabinet, sometimes openly as temporary head of a Ministry, and more often secretly as a grey eminence. During his early years of power he was a one-man government, freely making administrative and legislative as well as judicial decisions and responsible to no one but the King. So it seemed to Bentham many years later when he took a synoptic view of the functions of government. It was only in the 1780s, however, that he turned to constitutional law and began to consider the larger implications of the irresponsible mixture of power.

When he made his daily pilgrimage to Westminster Hall, he came to worship Lord Mansfield and not to condemn. On the King's Bench the Chief Justice was a god. With oracular assurance he delivered the principles of moderate Toryism that Bentham had learned as a child and had as yet no reasons to doubt. The great judge inspired him to a couplet:

Hail, noble Mansfield! chief among the just,
The bad man's terror, and the good man's trust!⁶⁰



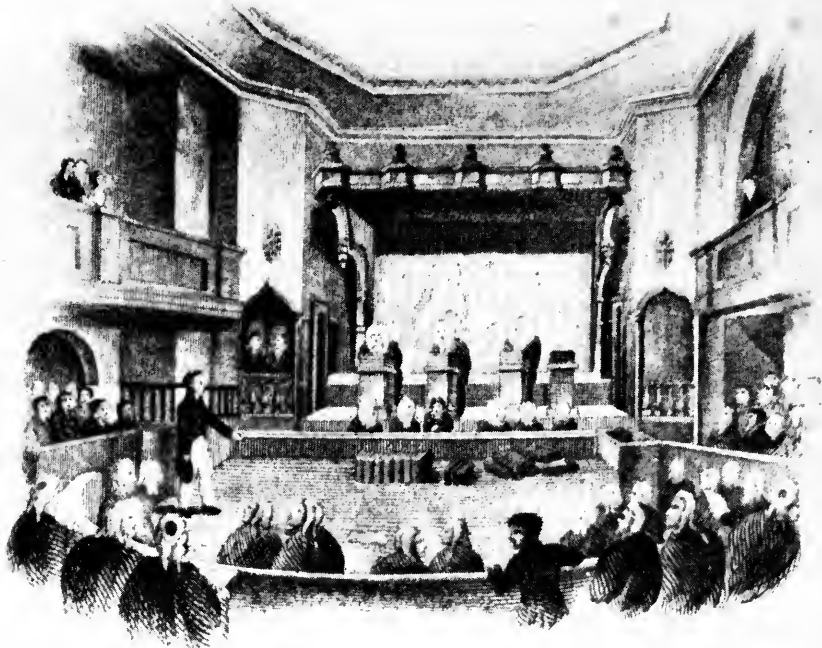
R.H. Hodgkin, 'Six Centuries of an Oxford College'.

Eighteenth century plan of Queen's College, Oxford.

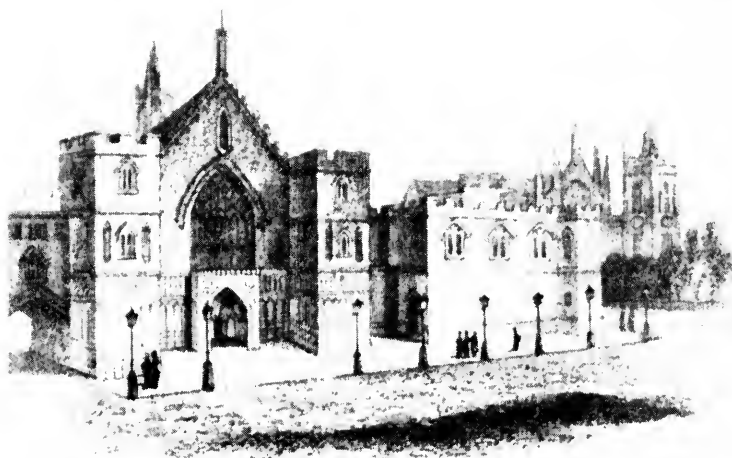


William Herbert, 'Antiquities of the Inns of Court'.

Lincoln's Inn in the eighteenth century.



Henry Roscoe, 'Westminster Hall'.



Henry Roscoe, 'Westminster Hall'.

Westminster Hall and the Court of Common Pleas in the eighteenth century.

The reverence Bentham and so many Englishmen felt for Lord Mansfield was entirely personal. The structure, furnishings, rituals, and procedure were similar in all the courts. They were homely and casual and no one was awed by them. The chief courts usually met in the main hall of Westminster Hall, a huge, ancient, Gothic room 270 feet long and 74 feet wide. They were separated from each other by curtains: Chancery and Exchequer were in the north end; Common Pleas in the middle; and King's Bench in the south-west corner.⁶¹

Each curtain enclosed a small crowded space. On the far wall behind the judges' bench was a large piece of blue tapestry embroidered with the national coat of arms. The judges' bench or rather box could seat five or six people: on it stood three life-size wooden statues of early English kings. Immediately before it were the clerk's table, the doorkeeper's box, and another table holding several folio volumes of the statutes which any suitor could consult. About four or five feet below were four semi-circular benches each seating twelve people. In Lord Mansfield's court a number of places on the front bench were reserved for students and here for many years Bentham sat, listened, admired, and gradually became horrified. The remaining seats were open to the public, who filed in casually, bringing with them the noise, stench and filth of the streets.

Every day the judges were given large nose-gays. This was their one special prerogative, for barristers also wore wigs and gowns. The general atmosphere was so relaxed that at one of the state trials an enclosure was filled with peers' children, who rolled about, quarrelled, munched apples, and threw the cores in each other's faces. Grosley reported with amazement:

I even saw some of them fling bits of apple into the enormous periwig of the Lord high steward; . . . he turned about two or three times, with a complacent air, which seemed to shew, that he took their freedom in good part.⁶²

But far more than personal magnetism drew Bentham to Mansfield. If no one in England was more honoured, few were more absurdly vilified in the popular press. He was one of the chief victims of Junius, who called him, 'the very worst and most dangerous man in the Kingdom'.⁶³ Bentham's sense of justice was again aroused. His first published writings were three

letters signed 'Irenius' in the *Gazetteer* in 1770-71. The second and third were defences of Lord Mansfield.⁶⁴

Above all, Bentham thought Mansfield was a practising Utilitarian. When he judged he did on a small scale what Bentham planned to do for the law as a whole. In his last speech in the House of Lords in February 1784, Lord Mansfield said, 'Every man who is called upon to consider a great measure . . . ought to examine the consequences that will probably flow from it. Thus a Roman praetor . . . used always to ask *cui bono*?'⁶⁵ This had the true Benthamic ring.

They were similar men in many ways. They had had the same education and were disgusted by it. They had almost sunk in the morass of the common law. Both were short men, learned, well-bred, and immensely ambitious. They adored Voltaire and shared the same set of tolerant, agnostic, Enlightenment values. They had the same gift and passion for clear thinking and ordered exposition. Neither had much patience with technical legal jargon and undefined abstractions. Mansfield made no dictionary as Bentham did, but his suave courtesy was often put to the test. Once when a barrister droned on, he interrupted, 'The court hopes your cold is better.'⁶⁶ A word like 'justice' meant nothing to either of them unless it had concrete referents. They knew what it meant between man and man. Mansfield once complained, '*Criminal* justice I can understand. But, *political* justice; where is she? What is she? What is her colour?'⁶⁷

As Mansfield never delivered an opinion without carefully explaining his reasons for it, so Bentham learned from him and never neglected to give a rationale for all his judgments. Among the reasons why Bentham became a radical reformer by 1790 was the fact that Lord Mansfield's successor was not so great a man. Lord Kenyon, Chief Justice from 1788 to 1802, never gave reasons. When asked for them, he would answer, 'I vow to God it is so.'⁶⁸

Lord Mansfield was not so much a reformer of old law as a creator of a new code. Bentham was particularly pleased by his codification of the commercial law. Formerly judges were so ignorant of mercantile and industrial affairs that such cases were usually settled by private arbitration among businessmen themselves. Lord Mansfield, however, admitted his ignorance, humbly learned, and created a code based on sound knowledge. He turned to his special permanent jury of professional business-

men for information on fine points of business, and they sought his advice on the niceties of law. Over the years he laid down general rules that could henceforward serve as precedents in similar cases. Thus he established a law of contract between shipowners and merchants, and a colonial law.

Another attitude they shared was scepticism toward trials by jury. Though it was 1790 before Bentham probed deeply into the nature and function of juries, he always sympathized with Mansfield's indignation in the Dean of St Asaph's case that:

the law shall be . . . what any twelve men . . . shall be inclined to think, — liable to no review and subject to no control, — under all the prejudices of the prevailing popular cry. . . . ⁶⁹

The Chief Justice did more than talk about equality before the law. Everybody did that. He practised it, so far as the system of payment by fees allowed, and made himself unpopular by doing so. For the man in the street, class made a difference, and he fully agreed that some men are more equal than others. Mansfield, however, ruled that 'the rank of the defendant was wholly immaterial'; that a case's merits were not 'lessened or enhanced by the consideration whether the wrong-doer was a peasant or a prince'.⁷⁰ Again Bentham lauded him. Legal equality was a fundamental and irrevocable aim of the Utilitarian system.

In a small way Lord Mansfield was also a legal reformer. He tried to bring light to some of the murkiest areas of procedure and evidence. A quick decisive man, he would not tolerate the tedious circumlocutions and arid protocol usual in the courts. Formerly each barrister could make as many successive motions as he pleased, so that the seniors monopolized the hearings and juniors seldom got their turn. The same points would be argued over and over again. Mansfield ruled that each barrister might make only one motion at a time, heard in strict rotation, and that no argument could be repeated. Soon after he took office, the huge backlog of cases on the calendar began to diminish and then disappear. Thereafter he judged every issue as it came ready for decision.

In the rules of evidence he overturned many of the customary dicta. He was contemptuous of much 'judge-made' law, though perforce he made it himself. One of his most famous maxims was, 'We do not sit here to take our rules of evidence from Siderfin and

Keble.* When Bentham wrote his incomparable *Rationale of Evidence* in the early years of the nineteenth century, this saying had become a bugbear. It seemed to epitomize judicial *laissez faire* and gave Mansfield a licence to change the law as he liked.

Though Bentham became very caustic about Mansfield's motives for reforming procedure and evidence, he never undervalued his accomplishment. So far as he went Bentham entirely approved. It was in fact Lord Mansfield's example that inspired his own vision of a complete code of procedure and evidence; and it is almost impossible to exaggerate the importance he attached to it. Bentham thought that if the first requirement of a new logic was a new dictionary, the second was clear meaningful sentences. When such sentences expressed the will of men with political power, Bentham called them laws. These expressions were either adjective or substantive. Under the Utilitarian system, the end of the substantive code was the greatest happiness of the greatest number. Adjective law was the preliminary means. It determined the effect of substantive law and was composed of procedure and evidence.⁷¹

Substantive laws are not self-enforcing. They presuppose an efficient adjective law. Only when the preliminaries were well-made could there be a real hope of achieving the substantive end of good government, or the greatest happiness. It was chimerical to talk of equality, rights, liberty and justice unless they were first defined in terms of court practice, that is, of procedure and evidence. Once again the law is everything, and in it procedure and evidence come first.

Bentham's life-long career as a critic of existing institutions began and ended with adjective law. Mrs Phillips' *Memoirs* first opened his eyes to the abominations of procedure and he was still condemning them when he died. Lord Mansfield had shown him what might be done and how much there was left to do.

Bentham defined justice negatively. First he listed the evils of procedure as they were in fact.

In the penal branch,

1. Impunity of delinquents.

2. Undue punishments, viz. punishments of non-delinquents, or punishment of delinquents otherwise than due.

* VII, 341. Siderfin and Keble were well known compilers of King's Bench case reports.

- In the non-penal branch,
3. Frustration of well-grounded claims.
4. Allowance of ill-grounded claims.
5. Expense.
6. Vexation.
7. Delay.
8. Precipitation.
9. Complication.⁷²

Avoiding these evils is justice. Defined positively, criminal justice is 'accomplishment of the punishment of delinquence' and civil justice is the 'effectuation of well-grounded claims'.⁷³ Lord Mansfield understood and practised Bentham's kind of justice.

Yet for all the similarities between the two men, for all Bentham's adoration, nothing came of it. Bentham waited long years in vain for Lord Mansfield's recognition and patronage. He never made the same mistake again, for if Mansfield was unsympathetic, his brethren and successors were much more so. Lords Kenyon, Ellenborough, Thurlow, Loughborough, and Eldon were anathema to Bentham.

What had he expected Lord Mansfield to do for him? He never explained. Certainly he would have accepted neither money nor legal business. He probably hoped that the great judge would listen to him closely, share his vision of a complete systematic code of law based on the principle of utility, and ultimately help to implement it. And Mansfield could easily have helped him had he wanted to. For a time he administered the Scottish patronage; he was an extremely wealthy man and had no children. Nor was Bentham unknown to him. The young man was not only an assiduous pupil but sometimes a fellow guest at the same dinner parties. Yet Mansfield never spoke a word to him. At least three times Bentham thought his chance had finally come.

In 1770 he went to Paris and lived there for six weeks with David Martin, a painter who was having his portrait of Mansfield engraved. Bentham drew up the articles of agreement. Lord Mansfield later commended them and asked who the draftsman had been, as Martin later told him.⁷⁴ In 1775 Bentham drew up the plan for John Lind's *Remarks on the Acts of the Thirteenth Parliament*, and it was printed exactly as he drafted it. Lind showed Mansfield his *Remarks* and explained Bentham's part in

the work. Again the Chief Justice praised him – and did nothing.⁷⁵ When *A Fragment on Government* was published anonymously in 1776, Lord Mansfield had it read to him and delighted in it. His reader, a friend of Bentham's, gave him a first-hand account. At times Mansfield cried out, 'Now he [the author] seems to be slumbering.' Then, 'Now he is awake again.'⁷⁶ Bentham was soon identified as the author, and once again he was ignored. 'To me,' he recalled, 'all this neglect remained a mystery.'⁷⁷

Gradually as he shifted and broadened his perspectives, the mystery cleared up. Until the 1780s he was more or less apolitical and preoccupied with questions of penal and civil law. When he finally inquired into the nature of political sovereignty, he began to understand that law and morals are inseparable, that the love of power is a mighty motive, and that Lord Mansfield was only human after all. As Bentham's horizon widened it was inevitable that Mansfield should no longer loom so large in it. Bentham began to see him not as a god above the system but as a committed member of the cabbala that ran it. Certainly there were factions in that exclusive club, but they fought over control rather than changes in the rules. The judges were as strongly Whig or Tory as the members of Parliament, and in any case eighteenth-century party differences amounted to little more than personal attachment or low or high church opinions.

Lord Mansfield's Toryism was notorious. He always upheld crown prerogative, strict constructions in libel law, and high church doctrines, though he was an agnostic himself and a steady advocate of religious toleration. The American Revolution was anathema to him.* Bentham's reverence for Mansfield had nothing to do with his political opinions. As he recalled, 'What his politics were, I did not comprehend; but, being his, they could not but be right.'⁷⁸

Bentham was not then, nor did he ever become, a party man. He judged every issue independently according to its Utilitarian consequences. If his opinions until the 1780s seemed more Tory than Whig and then became increasingly democratic, it was not because he sought Mansfield's patronage and was rejected. It was rather that he asked himself questions he had avoided

* These at least were the marks of Toryism as Bentham understood it, though he was aware that, for the most part, 'Whig' and 'Tory' were labels in party warfare. I keep to his usage throughout.

before. He was a passive Tory who rather indifferently kept the family opinions because he was too absorbed in legal analyses to inspect them carefully. The Whig arguments against them left him cold. They seemed loud and empty rhetoric.

Worshipful as Bentham was during his apprenticeship to Lord Mansfield, he was not a blind follower. Parochial and inarticulate though he was, he already had his own convictions. Though he did not question crown prerogative and detested John Wilkes, he always felt that a completely free press was a necessary condition of good government. He was equally anti-American and equally insistent on religious toleration, but he knew Mansfield was an unbeliever and smelled hypocrisy in his public professions of high church Anglicanism.

Bentham leaned towards the Whigs on questions of press freedom and low *vs.* high church, and in fact found a secondary god among them: Lord Camden.* Had he shown the slightest interest in law reform, Bentham would also have turned to him as a potential benefactor. But Lord Camden, though a leader of the Whigs and a political 'liberal', by modern standards at least, was a far more conservative judge than Mansfield. Although he became a popular hero by pronouncing against the legality of 'general warrants' in the first Wilkes trial, he always advocated strict construction of the common law with a minimum of judicial discretion. Bentham saw of course that, in an era when the courts were a national dramatic stage, discretion was the fastest and most efficient way of adjusting law and opinion. He always took the liberal side with Lord Mansfield.

Bentham admired Lord Camden for the same eloquence and powerful reasoning he found in Lord Mansfield. But there the resemblance stopped. Mansfield was suave and conciliatory; Camden was ill-bred, rude and violent. Mansfield was at every point a defender of government; Camden, an ardent critic. When Bentham was young and heard them both, he thought their differences made a difference. He supposed that they represented fundamentally opposed visions of the good society. Later he understood that Camden's enmity to Mansfield was not ideological at all but based on personal ambition. He compared them to the boxers, Crib and Molyneux. They put on a good show, as popular in its day as a boxing match. No real moral

* Sir Charles Pratt, 1714-94, Chief Justice of the Common Pleas, 1761; Lord Chancellor, 1766-70.

issues were involved. Their opposition was one of the 'accidents of the war of party'.⁷⁹

In *The Rationale of Evidence* Bentham summed up:

under English law, judges and law-writers may be considered as divided into *Liberalists* and *Rigorists*: . . . Lord Mansfield . . . used to be considered as the great champion and leader of the liberalists: – Lord Camden, his rival and bitter enemy, of the rigorists.⁸⁰

Despite their lip-service, however, they switched from one side to the other when it suited their purpose.

As to the demireps two fighting children, of whom the Tory was the better tempered and better bred, the difference was never to an honest man worth thinking about. . . . Had Murray been a Rigorist Pratt would have been a Liberalist: had Murray been a Whig, Pratt would have been a Tory. The difference? It was between Bavius and Maevius. Both were enemies, as every admirer of common, in contra-distinction to statute law, is, and ever will be, – . . . to security in society, to certainty in law.⁸¹

Until the 1780s power was a vague abstraction to Bentham. Only then did he fully realize how much power the judges exercised and how irresponsible it was. In 1789 he said shortly, 'It is a plain maxim of policy not to suffer the same man to possess two places the one of which must corrupt the other.'⁸² In fact, as he pointed out, it was only in the highest offices that constitutional theory was disregarded. As the judges legislated, so George III was at once King of England and Elector of Hanover, and these two interests sometimes conflicted. Yet it was standard practice to prohibit attorneys from becoming justices of the peace.⁸³

Bentham asked himself, where must sovereignty lie? He answered, in the legislature. But where did it in fact lie? With the judges. Not only did Parliament seek judicial approval before it passed statutes, but the judges made their own law and were in fact accountable to no one. Bentham thought that statute law must be supreme and that a popularly responsible Parliament must be entirely free to legislate as fresh circumstances demanded. Lord Mansfield thought otherwise. In 1784 he declared in favour of 'an abstract proposition, which no one

can deny, "that neither House of Parliament has power to suspend or alter the law of the land"'.⁸⁴ For him common or judge-made law was supreme.

Bentham's disagreement over the location of sovereign power was a question of the logic of the will. Whose will should the citizen obey? That of a member of Parliament whom he elects or the arbitrary will of a judge over whom he has no control? His choice was determined by his endless search for certainty. In *The Rationale of Evidence* he declared:

Jurisprudential law . . . is a vast hot-bed of uncertainty. . . . Will you believe Lord Mansfield? Judges are higher, better, fitter legislators, than king, lords, and commons. 'Common law' (says he in so many words) 'is superior to an act of parliament.' . . . Mansfield, when a reforming fit came on him, chose to do everything by himself, with *io, mio, and arrio*, in the character of mutes and train-bearers.⁸⁵

Here was an example of *laissez faire* unlimited. Bentham scorned Blackstone's praise of Mansfield for establishing a 'system'.

A system for his successors to follow? – what system? – a system of doing what they pleased? This . . . was the system not only taken up, but avowed by this great judge; . . .⁸⁶

Bentham was a radical reformer because he was a radical conservative. He wanted to make the stock clichés of constitutional law realities. He suggested that Englishmen talk less about separation and balance of powers and begin to put them into practice. Let King, Lords, and Commons legislate; let the judges judge. He never supposed that judicial discretion could be eliminated altogether. He did, however, demand that the farrago of legislative, judicial, and executive functions which Lord Mansfield exercised be permanently divided. In fact the experiment of a judge in the Cabinet was so unpopular that it was tried only once again, with Lord Ellenborough in the short-lived Fox government of 1806.

The story of Bentham's estrangement from Lord Mansfield had no sudden crises. It was a long, slow, simple, tempered and impersonal process. He never lost his respect and often referred to him as 'one of the most enlightened of English judges'.⁸⁷ Mansfield was the 'ablest as well as most zealous absolutist that,

since the aristocratical revolution, ever sat upon an English bench.'⁸⁸ Bentham abandoned his early Tory views of the American Revolution and crown prerogative because they had no utility. But he kept many of the early opinions he had shared with Lord Mansfield: a contempt for unreformed common law, the rules of procedure and evidence, legal fictions and circumlocutions; an insistence upon reasons; and religious toleration.

At last in 1781 Bentham found a patron, the Earl of Shelburne.* At last he saw that he would never find one on the bench, regardless of his talents or political opinions. He might find a judge who shared his diagnosis: the greatest social evil is uncertainty. But he would never find one who agreed with his radical cure: the complete conversion of common into statute law.

Wherever jurisprudential law reigns, certainty is impossible: it has no ground to stand on. Jurisprudential law is sham law: to ascribe stability to this creature of the imagination, is to ascribe stability to a shadow.

Statute law has everywhere a tenor – a determinate collection of words: there is the will, and there is the expression of it.⁸⁹

It was inevitable that Bentham shifted his hopes of reform from the courts to Parliament, from the upholders of common law to the makers of statute law. Then it was only a question of time before he became a parliamentary as well as a legal reformer, for he began to consider the nature of legislative power and found it abused.

The Principal Object: Security.

It was also inevitable that a man with his genius for exhaustive classification should fit his painful daily experience into a large theoretical framework. From the paradoxical gap between law and opinion, the growing uncertainties of the courts and the multiplying certainties of private life, Bentham concluded that the search for security is one of the prime motives of man.† He saw, on the one hand, how much suffering legal irresolution and

* William Petty, 1737–1805, became first Marquis of Lansdowne in 1784. See below, Chapter 8.

† See Appendix B below; an essay on uncertainty in later Benthamese (1823), 'On Logic and Grammar as Applied to Legislation'.

incomprehensibility caused and, on the other, how much good was done by even the smallest private efforts to make daily life more secure. He also realized why judges were usually intransigent enemies of reform: their own security was fixed and they were bent on preserving it.

How did Bentham's insight become part of his general principles? The universal end of good government was, of course, the greatest happiness of the greatest number. Taken alone, he knew this goal was an inoperable truism. Its utility depended on descriptions of things that make men happy and of ways to produce them. It became meaningful only when he outlined subsidiary principles that could be further subdivided and ultimately tested against the entanglements of daily life. These were four: security, subsistence, abundance, and equality. This was a standard analysis throughout his life.⁹⁰ It is no exaggeration to say that these four subordinate ends of government were as vital to his system as the greatest happiness principle itself.

But the chief subordinate end of government is security, or settled grounds of expectation:

security is the only one [of the four objects of government] which necessarily embraces the future: subsistence, abundance, equality, may be regarded for a moment only; but security implies extension in point of time, – Security is therefore the principal object.⁹¹

Bentham's acute awareness of time was one of his most persistent insights and affected almost everything he wrote. He considered foresight, for example, a measure of the civilized man and living from day to day a mark of the savage.*

If Bentham's analysis changed, it was only in a growing sense of urgency about the need for security. As the area of his interests broadened he realized that uncertainty lurked everywhere, not only in the courts but throughout the whole structure of government. The King, for instance, had not merely the arbitrary power of pardon, but the sole command of the nation's military forces, and the power of appointment of judges and justices of the peace. In turn the J.P.s were virtual monarchs on a local level, practitioners of almost unlimited *laissez faire*.

No one in eighteenth-century England was unaffected by uncertainties. Lord Mansfield reacted in one way, by small *ad hoc*

* See Chapter 5 below.

reforms in procedure and commercial law. Bentham responded much more passionately and comprehensively. He created a complete theory of morals and legislation. The man in the street reacted in still a third way. He saw that law was a lottery and made a game of outwitting it. Crime became an exhilarating gamble with high stakes and men like little Jack Sheppard became folk-heroes because they went to the gallows with calm bravado. They staked their liberty against law, people felt, and coolly paid the price for it. An Englishman's liberty was his most precious possession, and he considered it the right to do everything not legally forbidden or, more widely, whatever he could get away with. As Sir Augustus Hervey explained to the visiting Casanova in 1763:

One may break any law one likes in England as long as one is prepared to pay the penalty. We are a little mad on this point perhaps, but we attach great importance to it, for we are sticklers for liberty.⁹²

Bentham deplored this popular attitude. How could liberty and law be opposed when liberty is the work of law itself? Strictly speaking, all law is against liberty in its original sense of the absence of coercion. For law is an expression of will, a command, an act of coercion. Bentham began his discussion of liberty by unravelling the ambiguities of popular usage. It has often been said that he cared little for liberty. On the contrary, he cared too much for it to allow common sloppy obscurities to linger on.

As it was popularly understood, liberty was trebly ambiguous: Bentham thought that personal, constitutional, and international liberty were all different things that people jumbled indistinguishably. He could not understand the Englishman's pride in his liberty. Why boast about freedom to do whatever the law does not prohibit, 'for if the laws are *bad*, what becomes of liberty? and if the laws are good, where is its value?'⁹³

Clear and simple definition was as usual Bentham's first order of business. Once again, his awareness of time and the evils of uncertainty conditioned it. Liberty is a subordinate branch of security. If our liberties carry over from day to day, if we can look forward to understanding them in the same way next week or next year, the law has fixed their meanings for us.

It may be surprising, that liberty is not placed among the principal objects of the law. But in order that we may have clear notions, it is necessary to consider it as a branch of security: personal liberty is security against a certain species of injury which affects the person; whilst, as to political liberty, it is another branch of security – security against the injustice of the members of the Government.⁹⁴

His new definition had no effect and he began to avoid the word ‘liberty’ altogether. For the popular usage was not only highly ambiguous but potentially revolutionary.

It is unfortunate that individual and political liberty have received the same name. By means of this double signification, a syllogism may be formed in favour of perpetual revolt. An established law is a restraint upon liberty: a restraint upon liberty is tyranny: tyranny is a legitimate reason for revolt.⁹⁵

Above all Bentham detested the unending incantations about ‘English liberties’ for their chronic implied opposition to *all* government.

There are few words which, with its derivations, have been more mischievous than this word liberty. When it means anything beyond mere caprice and dogmatism, it means good government; and if good government had had the good fortune to occupy the same place in the public mind which has been occupied by the vague entity called liberty, the crimes and follies which have disgraced and retarded the progress of political improvement would hardly have been committed.⁹⁶

The small, timid, inexperienced, eighteen-year-old boy who edged his way among the crowds to Westminster Hall in 1766 was disturbed. He did not know how to respond to the evils of uncertainty. The longer he pored over case-books of Anglo-Saxon and Roman law, the less comprehensible they seemed. The more regularly he attended the courts, the less security he found there. The popular cry of liberty was no answer. He was afraid of disorder and still too close to his father to question Tory opinions. Nor had he yet discovered a way of ordering the chaos he saw everywhere. He was confused and despairing, unable to find an identity or a faith. That he should study law was a sacred assumption of his father’s and he had never challenged it.

Though he was sure he was unfit for the role his father assigned him in the legal cabbala, he had not yet found another. Nor did he understand the place of law in society. Why should it stand still while inventions, discoveries, changes, and improvements were ceaselessly transforming English life? He knew only that he could not devote his life to a dead enterprise.

His one refuge was Lincoln's Inn and his solace was chemistry. Here he found the growing certainty he sought so hopelessly in the law. He had longed to hear the chemistry lectures at Oxford. Now when he became independent in 1766, he immediately set up a chemistry laboratory in a small closet. There he was happy, absorbed for hours at a time in simple inexpensive experiments. He was another of the small army of enthusiastic eighteenth-century amateurs like Benjamin Franklin, Dr Johnson, and Voltaire. He accepted Stahl's phlogiston theory as most chemists then did. Perhaps none of his modest experiments was so imaginative as Voltaire's effort to test Livy's report that Hannibal had dissolved the Alpine snows by pouring hot vinegar on Mont Blanc. He did, however, become so excited over his new method of generating air that he wrote to the great Dr Priestley about it. Priestley was kind and offered him an interview,⁹⁷ but Bentham's shyness overcame him and they did not meet.

The world of science was totally different from the world of law, and Bentham commuted unhappily between them. He shifted from a bright, clear, dynamic world where invention was welcomed and progress taken for granted to a murky, confused, static world guarded by an in-group that fought every change. About forty years later he recalled his shock as he moved from one world to the other.

That the incomprehensibility of the law – a circumstance which, if the law were wise and rational, would be the greatest of all abuses – is the very remedy which in its present state preserves society from utter dissolution; and that, if rogues did but know all the pains that the law has taken for their benefit, honest men would have nothing left they could call their own.

Such was the prospect that presented itself to me on my entrance upon this branch of moral science. I had come warm to it from the study of physical science. I had there seen the human mind advancing with uninterrupted and continually accelerated progress toward the pinnacle of perfection: facts wanted, but, by the unmolested and even publicly assisted industry of individuals, the deficiency continually

lessened, the demand continually supplied: the faculty, the organ of invention sound, and by wholesome exercise increasing in vigour every day: errors still abundant enough, but continually and easily corrected, being the result not so much of prejudice as of ignorance: every eye open to instruction, every ear eager to imbibe it. When I turned to the field of law, the contrast was equally impressive and afflicting.⁹⁸

Why was the gap so great, Bentham wondered years after he had bridged it? Why was it particularly wide in England?

What Newton, what Locke, what Priestley, or what Hume ever illuminated the paths of law? Why is it that the very idea of a rational or regular system of legislation has been lost among lawyers since the time of . . . Bacon . . .? Why is it that for the least crude ideas they were ever able to entertain . . . of their own constitution . . . the English are indebted . . . to a Genevan lawyer? * Why is it that in so important a branch of legislation as political economy the few just notions that begin to be entertained have been taught them not by any lawyer but by a Scotch professor of moral philosophy at Glasgow? Why – but that the labyrinth of law is still more intricate and dark and dirty in England than in any other nation. . . .⁹⁹

Bentham began to sense his mission. He had studied physics and botany at Oxford. Now as he tinkered delightedly with his malodorous chemical mixtures, he considered the general conditions of advance in any science. One of them, he saw, was a rationalized vocabulary. Those who use it agree to talk about the same things in the same unambiguous language. When new words are needed to express new ideas, they co-operate in inventing and accepting them. Then, systematically and disinterestedly, they collect and order all relevant propositions. † Bentham asked, why not apply scientific method to law? Through these techniques the sciences were making awe-inspiring advances: who could prophesy the future progress of the law? Who could be better prepared to apply scientific method than he was himself? No one, he concluded, and calmly chose to do the monumental job himself.

He made his choice slowly and reluctantly. First his

* Delolme, whose *Constitution de l'Angleterre* was published in 1771.

† See Chapter 6 below for a fuller discussion of Bentham on the nature of science.

imagination had to be fired. He had to re-create the law as a field of limitless possibilities for increasing happiness rather than the painful morass it had always seemed. Before he did he almost abandoned it altogether. He had never wanted to be a lawyer. His father ordered, and he quietly obeyed. He would much rather have been a scientist. By 1768 he was so disgusted with the law that despite his father he plotted a new career in science. He drew up plans for an expedition to the interior wilds of South America similar to Von Humboldt's in 1799. He hoped:

that what little I had picked up of Botany Chymistry and other branches of natural knowledge might enable me perhaps to be of service to mankind by exploring the production of those fertile and untrodden regions.¹⁰⁰

In 1768 and 1769, however, Bentham found what he needed to make the law an even more exciting adventure.

CHAPTER 2

1 Everett, *op. cit.*, pp. 43-4.

2 *Ibid.*

3 A. M. 33537, p. 200, 16 October 1766.

4 John Campbell, *The Lives of the Chief Justices* (Philadelphia: Blanchard & Lea, 1851), II, 253.

5 Campbell, *op. cit.*, II, 254-5.

6 Francesca Wilson, *Strange Island* (London: Longmans, Green & Co., 1955), p. 114.

7 Leon Radzinowicz, *The History of English Criminal Law and its Administration from 1750* (London: Stevens and Sons, Ltd., 1948), I, pp. 30-1, note 1; an invaluable mine of fascinating information.

8 X, 73.

9 A. M. 33539, p. 55, 5 June 1780.

10 *Ibid.*, p. 57, 20 June 1780.

11 M. Dorothy George, *London Life in the Eighteenth Century* (London: Kegan Paul, Trench, Trubner, 1925), p. 73. This is another invaluable book on which I have relied heavily.

12 *Johnson's England, op. cit.*, II, 380.

- 13 George, *op. cit.*, p. 1.
- 14 Lewis and Maude, *op. cit.*, p. 52.
- 15 George, *op. cit.*, p. 99.
- 16 At least, this guess was accepted by M. Grosley, an observant French visitor. See his *A Tour to London; or, New Observations on England and its Inhabitants* (London: Lockyer Davis, 1772), I, 39-40.
- 17 Humphrey Clinker (London: Oxford World's Classics, 1940), p. 102.
- 18 Johnson's *England*, *op. cit.*, I, 167.
- 19 John Entick, *History and Survey of London, Westminster, Southwark, etc.* (London: Edw. and Chas. Dilly, 1766), vols. III & IV.
- 20 III, 206. Quoted as heading to Chapter 2.
- 21 B. 27, p. 172.
- 22 III, 204.
- 23 See the fine Mackinnon essay cited above.
- 24 Dicey, *op. cit.*, pp. 88-9.
- 25 *The Black Book, an Exposition of Abuses in Church and State*, ed. John Wade (London: 1835), p. 289. This huge compilation was one of the chief weapons of the radical reformers, and is Benthamic throughout.
- 26 Sir William Holdsworth, *A History of English Law* (London: Methuen & Co., 1903-38), vol. XII, 555.
- 27 Philip Anthony Brown, *The French Revolution in English History* (London: Crossley Lockwood and Son, 1918), p. 107.
- 28 VI, 207. 29 IV, 447.
- 30 B. 27, p. 93.
- 31 II, 409, *The Book of Fallacies*.
- 32 *Black Book*, *op. cit.*, p. 290.
- 33 Godley, *op. cit.*, p. 40.
- 34 Radzinowicz, *op. cit.*, p. 94, note.
- 35 *Ibid.*, p. 538.
- 36 *Ibid.*
- 37 *Ibid.*, p. 151.
- 38 *Ibid.*, p. 157.
- 39 Dicey's description, *op. cit.*, p. 71.
- 40 Sir William Blackstone, *Commentaries on the Laws of England* (Philadelphia: George W. Childs, 1863), I, 171.
- 41 X, 45. 42 V, 96.
- 43 Halévy, *op. cit.*, p. 80.
- 44 I, 235. 45 V, 92. 46 I, 236.
- 47 B. 96, p. 64, *ca.* 1773.

48 Elie Halévy, *La Formation du Radicalisme Philosophique* (Paris: Felix Alcan, 1901), I, 310. This is the original three-volume French edition which contains a monumental series of informative footnotes omitted in the English edition. No serious Bentham student can afford to neglect them. See also Radzinowicz, *op. cit.*, I, 381.

49 II, 407, *The Book of Fallacies*.

50 V, 236, 1792.

51 B. 169, p. 97, no date, before 1780.

52 II, 11.

53 See below p. 208ff.

54 See below, p. 122ff.

55 See VI and VII, *The Rationale of Evidence*. Among the reasons why I consider this Bentham's masterpiece are his subtle and original analyses of many of the problems of philosophy in a legal context.

56 VII, 83.

57 VII, 114, and B. 149, p. 254, ca. 1828.

58 Campbell, *op. cit.*, II, 255-7.

59 *Ibid.*, II, 303-04.

60 X, 46.

61 Entick, *op. cit.*, pp. 399ff.

62 Grosley, *op. cit.*, I, 170-1.

63 Nicholas Wraxall, *Historical Memoirs of My Own Times* (London: 1815), p. 245.

64 For a full discussion of these early letters, see Baumgardt, *op. cit.*, pp. 17ff.

65 Campbell, *op. cit.*, II, 408.

66 Henry Roscoe, ed., *Westminster Hall: or Professional Relics and Anecdotes* (London: John Knight & Henry Lacey, 1825), I, 203.

67 Nicholas Wraxall, *Posthumous Memoirs* (London: 1826), p. 340.

68 Campbell, *op. cit.*, III, 94.

69 *Ibid.*, II, 412. 70 *Ibid.*, II, 325-6.

71 See *The Rationale of Evidence*, VI and VII, and *Principles of Judicial Procedure*, II, 1-188. Bentham wrote continually on these subjects for over thirty years.

72 II, 19. 73 II, 20. 74 I, 247. 75 I, 247-8. 76 I, 246. 77 I, 248.

78 I, 247. 79 VI, 145.

80 *Ibid.*

81 *Ibid.*

82 B. 25, p. 107.

83 *Ibid.*

84 Campbell, *op. cit.*, II, 409.

85 VII, 310-11. 86 VI, 146. 87 VI, 534. 88 V, 542. 89 VII, 309.

90 See for a few among countless repetitions: I, 302; III, 224; III, 293; and IX, 11.

91 I, 302; IX, 11.

92 Wilson, *op. cit.*, p. 97.

93 Jeremy Bentham, *Deontology* (London: Longman, Rees, Orme, Browne, Green & Longmans, 1834), II, p. 60.

94 I, 203, *Principles of the Civil Code*.

95 III, 185.

96 *Deontology, op. cit.*, II, 60.

97 A. M. 36524, 16 December 1774.

98 VI, 205.

99 B. 35, p. 98, from a large unpublished work, *Juries*, 1790.

100 B. 169, p. 104.

The Loom Is Set

*'He invades authors like a monarch; and what
would be theft in other poets, is only victory in him.'*

DRYDEN ON BEN JONSON

The First and French Threads.

'The loom being set,' Bentham once wrote, 'I can at pleasure take up the thread and spin it wherever it is broken.'¹ He began with Hume. He was still a child when he first read the essay, 'Why Utility Pleases'.² In 1776 he described the effect it had on him.

This title I well remember staggered me when first I read it: which was a great while ago, before the system here offered to the public was digested, indeed so much as thought of. I perceived instantaneously tho' confusedly that there was something in the phrase, taking the words simply as they appear, that made it amount to an identical proposition. For a thing to possess the quality of utility, is for it to possess the capacity of giving pleasure.³

Later Bentham realized that he had misunderstood Hume.

The truth is, the question which that ingenious philosopher really meant to propose to himself is why the circumstance of a thing appearing to be qualified to give the proprietor [pleasure] render[s] the consideration of the thing pleasing to one who is not the proprietor.⁴

All the same, the initial threads of Bentham's Utilitarianism came from this misunderstanding. He never doubted that utility and pleasure were synonymous.

In 1768 he discovered a second set of threads for his system. He returned to Oxford to vote in the parliamentary election as an M.A. of the university. In the small circulating library of Harper's Coffee House he found a pamphlet by Dr Priestley which contained the phrase, 'the greatest happiness of the

greatest number'. At once he made it his own. For him the principle of utility was not an identical proposition, as Dr Priestley offered it, but the grand normative end of government, 'a principle constituting not only a rational foundation, but the only rational foundation, of all enactments in legislation and all rules and precepts destined for the direction of human conduct in private life'.*

Though Bentham was exhilarated by his discovery, it was another year before he began to learn how to use it. For Dr Priestley had the same fault that Bentham later found in almost every philosopher: he gave no reasons, nor did he break down general principles into limited rules that people could follow in their daily routines. Not that he himself demanded a reason for the greatest happiness principle. It came to him as an overwhelming revelation.

Now he had the separate strands of Utilitarianism, but he needed to find a way to tie them together. Hume had given him a descriptive principle of individual behaviour. Priestley gave him a normative principle of the ends of government. How could they be connected? In 1769 he read Helvétius, who showed him how.

Meanwhile, chemistry was not his only consolation for legal miseries. He saw Mrs Cibber at Covent Garden. His father took

* B. 13, p. 360, 'A Short History of Utilitarianism', 1829. This is an intellectual autobiography which Bentham wrote in the third person for the *Westminster Review*. It never appeared there.

There is a story here. The essay was finally published by John Bowring in the *Deontology* in 1834 as his own composition, 'History of the Greatest Happiness Principle'. This plagiarized version is somewhat garbled. Bowring borrowed some parts directly; others he changed from third person to direct quotes. In this way the most famous quotation in the whole Bentham literature is a fraud. Here it is as Bentham wrote it:

it was by that pamphlet and that page of it that he drew that phrase, the words and import of which have by his writings been so widely diffused over the civilized world. At sight of it he cried out, as it were in an inward ecstasy like Archimedes on the discovery of the fundamental principles of Hydrostatics, *Eureka*: little did he think of the correction which within these few years on a closer scrutiny he found himself under the necessity of applying to it.

See Chapter 5 below for these changes in the principle of utility. For Bowring's first person version, see Montagu's edition of *A Fragment on Government* (London: Oxford University Press, 1931), p. 34, and Dicey, *op. cit.*, p. 132.

him to Paris in 1764 and he went again in 1770. He was then and always a tireless walker and a tireless reader. As he had strolled aimlessly in the fields around Oxford gathering botanical specimens, so he often wandered through the London suburbs with only a book in his pocket. His sense of direction was vague and he sometimes got lost. On the way home he often called on family friends in the neighbourhood. Sometimes they were at home and gave him a dinner; occasionally they were not. He described one dinnerless adventure to his father. Arriving at a Mr Hawkins' house, he was told by the maid that the family was away.

This was an occurrence I was not prepared to expect: I had little acquaintance of the way, and secure of getting intelligence there, I had not bestowed a thought about it. While I was endeavouring to recollect the course of the country . . . perceiving the maid still staring after me, I did not care to betray my irresolution and perplexity, and therefore endeavoured to strike out a way to the common. . . . After a pretty many turnings and windings I found . . . a direction post pointing the way to Hampton. . . . Beginning to feel rather faint and weary I was tempted by the sight of a delicious Hayrick not far from the water to sit and repose myself. — I staid there two hours, and dined upon Epictetus's *Morals* which I had in my pocket. I do not know that I was any thing to signify less contented than if I had found Mr H. at home just setting down to a fine piece of roast Beef.⁵

Bentham's education had been exclusively classical, but neither Epictetus nor any other ancient author was a satisfactory substitute for Coke on Littleton, or Blackstone. He wanted fresh new answers to modern problems. Finally in 1769 he stumbled upon a treasure-house of materials, so rich with promise that he spent the rest of his life spinning theories with the golden insights he found there. He discovered a new world of books and revelled in it. Over fifty years later he recalled:

The year 1769 was to me a most interesting year. . . . I was beginning to get gleams of practical philosophy. Montesquieu, Barrington,* Beccaria, and Helvétius, but most of all Helvétius, set me on the principle of utility.⁶

* Daines Barrington, 1727–1800, whose *Observations on the Statutes*, 1766, impressed Bentham greatly. Barrington was, he thought, 'vastly superior to Blackstone in his dispositions to improvement: more impartial in his judg-

Bentham read the *philosophes* as an exhausted runner inhales oxygen. They set him upon a reading marathon. Before he finished he sped through Condillac, Maupertuis, Voltaire, and D'Alembert. He was already familiar with the English philosophers – Hobbes, Bacon, Locke, Shaftesbury, Lord Bolingbroke, Mandeville, Hutcheson, Hartley, and Hume – but he now saw them through the eyes of the *philosophes*, with a much deeper appreciation. Quickly he outlined his reactions and asked himself, 'Would I take £500 for that sheet of paper? Poor as I was, I answered myself – No! that I would not.'⁷

None of the books Bentham read had a more profound effect on him than Helvétius' *De l'Esprit*. In the hundreds of character sketches that Sainte-Beuve drew he always sought to centre them on a man's dominant passion. He asked, at what moment and why did this 'faculté maîtresse' develop? Bentham's passion began in Helvétius, who spoke the words he wanted to hear just when he desperately needed to be reassured. In 1778 he explained why he had abandoned his South American project.

If I recollect aright it was partly the weakness of my constitution, partly the instruction I gathered from Helvétius, that gradually weaned me from that idea. From him I got a standard to measure the relative importance of the several pursuits a man might be engaged in: and the result of it was that the way of all others in which a man might be of most service to his fellow creatures was by making improvements in the science which I had been engaged to study by profession.⁸

Helvétius taught Bentham that legislation arched high above all that man did. For the first time he began to understand the place of law in society and his own relation to it. 'Other Arts and Sciences,' he saw, 'take in hand each a particular and narrow division of human action. Jurisprudence extends its views over every species of act whatever.'⁹

Nor was this the sole or even the most important insight Helvétius gave him. He showed Bentham how to bring Hume and Priestley, utility as pleasure and utility as a measure of good government, together. He taught him the interdependence of

ment of men and things – less sycophancy, and a higher intellect. . . . His book was a great treasure; and when I saw the placid little man in the Strand, I used to look at him with prodigious veneration . . . the book is everything, a propos of everything. I wrote volumes upon his volume.' (X, 121.)

pleasures and pains, happiness, and law. Helvétius repeated Dr Priestley's greatest happiness principle and tried to make it practically operative by breaking down happiness into pleasures and the avoidance of pains. His analyses were primitive and fragmentary, Bentham knew, and he tempered his admiration with caution. Though Helvétius was 'that illustrious philosopher', Bentham made it plain that he was a man 'whose principles however I am very far from adopting without distinction. . . .'¹⁰ Rude as Helvétius' attempts at definition were, however, they inspired Bentham's great vision: a complete science of morals and legislation.

Bentham also learned from him that the first necessity of a new science is definition. John Stuart Mill's criticism that Bentham had little respect for other minds may have seemed true of the old man whom he knew, but it did not fit the young enthusiast in Lincoln's Inn. Few have been so scrupulous and candid in acknowledging intellectual debts. There was no one to whom he was more openly grateful than Helvétius. In an unpublished preface to a penal code written in 1779 Bentham wrote:

If the book is good for nothing, it is not for want of pains to make it better. I have toiled in the mine of Definition, and perhaps this may be the first book in Moral subjects in which it has been done so with uniformity and perseverance. Had it been my own original idea to have done so, I should have thought I had done more than has ever been done by any one, for the good of Moral Science. It is not. No other merit was left for me than those [sic] of accuracy and patience – The merit of invention belongs to others – It is right it should be known who those others are.

It may be very true, that this man in his Logic, and another man in his Logic, may have observed in laying down the rules of Definition, that Definition was a very good thing; . . . But it was reserved to Helvétius to feel its full importance – It is Helvétius who has first seen that a dictionary of moral terms defined, instead of being subordinate in its use to the work from whence the definitions should be extracted, would of itself be superior to that of any work which did not comprise it. It was for Helvétius, to see and to acknowledge that it is a work as in Great Britain only can be achieved. It was for him to read it in that Talisman before which the Chimeras of Scholastic Metaphysics and the contradictions of commonplace morality must vanish into smoke. . . . The Master Principle I received from [Helvétius was] the richest gift as it still seems to me I ever yet received, that was yet presented by the hand of man.¹¹

When Bentham read Beccaria¹² and Maupertuis his vision became clearer and his excitement at the possibilities mounted. They too had made preliminary attempts at psychological analysis.

The idea of considering happiness as resolvable into a number of individual pleasures, I took from Helvétius: before whom it can scarcely be said to have had a meaning. The idea of estimating the value of each sensation by analysing it into . . . four ingredients [intensity, duration, proximity, certainty] I took from M. Beccaria: . . . Considering that punishment is but pain applied to a certain purpose, that the value of a pleasure is susceptible of the same analysis and that pains and pleasures, and actions in as far as they had a tendency to produce or prevent the one and the other were all that morals and politics or so much as was of any use or meaning in those sciences had in view, it seemed to me that such an analysis was the very thing that was wanted as the foundation for a complete system of moral science.

I had already proceeded some length in building upon that foundation when Maupertuis' Essay on Moral Philosophy fell into my hands. That ingenious philosopher whose work is of a date some years prior to that of M. Beccaria, proceeds upon the same idea of making such an analysis for his ground-work. He had however pursued it but by halves omitting to take any account of the two articles of proximity and certainty.¹³

No sooner had Bentham discovered the possibility of a science of morals and legislation in Helvétius than further evidence seemed to pile up. He accepted it all rapturously. Among the *philosophes* the need for definition was a commonplace. If Helvétius, Beccaria, and Maupertuis attempted to analyse moral and legal language, so did Voltaire and the Abbé Morellet.* He thanked them all. He told Voltaire in a letter he never had the courage to send, 'I have taken counsel of you much oftener than of our own L^d Coke and Hale and Blackstone.'¹⁴ In 1789 he sent Morellet a copy of *The Principles of Morals*, the result of his own attempts at definition. He apologized for its dryness:

Several of my friends say it contains all truth: but no man conceives it possible for any other man to get through it. . . . Possibly among

* 1727-1819, a minor but long-lived *philosophe*, Voltaire's 'L'Abbé Mordelles', a prolific pamphleteer; now remembered largely for his *Memoires*; a long-time and intimate correspondent of Bentham's.

Frenchmen you and Condorcet might be able to get through with it if you were each of you alone and without any other book on a desert island. So might D'Alembert and Condillac had they been alive. The unreadableness of it I lay partly at your door: it was you as much as anybody with . . . your definitions and divisions of *value* that led me into that track.¹⁵

The kind of hedonistic analysis that Bentham borrowed from the *philosophes* was so much in the air that it spread to regions he knew nothing about. In 1780 a friend sent him this sympathetic passage from Wieland's 'Diogenes'.

Every public or private virtue has for its object to promote some *good*, or to prevent, or change to *good*, some *evil*, and if you analyze this *evil* and *good* the first will always resolve itself into *pain*, and the other into *pleasure*.¹⁶

It was no part of Bentham's purpose to make false claims of originality for the initial postulates of Utilitarianism. Quite the reverse. The more commonplace he could make them seem, the better, for his aim was persuasive. He knew that old ideas like old shoes are more comfortable than new ones. Though he welcomed every confirming statement from the *philosophes*, he yet laid a serious charge against them. Their ideas were meteors, sudden brilliant flashes and no more. They had no sustaining power. And in their deficiency Bentham saw his opportunity. He took their insights on his own loom and ultimately wove a fabric so wide it covered the furthest corners of morals and legislation. He applied them exhaustively to English life – to all branches of law, civil, penal, and constitutional; religion; education; social policy; the political system, domestic and foreign. Often he found gaping holes between theory and practice, and he had to patch them with innovations of his own. He borrowed as freely and unselfconsciously as other scientists build on the results of their predecessors.

Bentham was so delighted with the *philosophes* that he even forgave their incompleteness. Any effort at a science of morals and legislation was better than none. Of Voltaire's *Prix de la Justice et de l'Humanité* he wrote:

Certain Reviewers have bestowd on it the epithet of superficial. True it is that it is neither methodical nor compleat. . . . Before they had

thought themselves authorized to slight it as superficial, they should have been ready to have pointed out some other which in comparison of it may be deemed profound. If to be conformable to the principle of utility is to be ingenious and profound, it is at least more so than the correspondent passages in any established system of institutions actually in force.¹⁷

If Helvétius gave Bentham his first full great vision, D'Alembert gave him a second one. His 'Système figuré des connaissances humaines', a diagrammatic chart of all branches of human knowledge, inspired Bentham to make a better one. And D'Alembert's own division of language helped Bentham to do it.

In D'Alembert's *Miscellanies* Bentham discovered the first requirement of effective definition: the division of language into real and fictitious entities. He treasured it as a sure and indispensable guide through the entire universe of discourse. This distinction, he said:

will be found to pervade the whole mass of every language on earth actual or possible. Names of *bodies*, for example, are names of *real entities*; names of qualities and relations, names of fictitious entities. . . .

Almost all names, employed in speaking of the phenomena of the mind, are names of fictitious entities. . . . In speaking of any *pneumatic* (or say *immaterial* or *spiritual*) object, no name has ever been employed, that had not first been employed as the name of some *material* (or say *corporeal*) one. Lamentable have been the confusion and darkness, produced by taking the names of *fictitious* for the names of *real* entities.¹⁸

Bentham understood and deplored the ineradicable human urge to substantialize names. D'Alembert's division cleared a path for him not only through the obscurities of everyday language, but through the whole overgrown logomachy of classical philosophy. Stripped bare, his basic charge against Plato and Aristotle was this: they reified.

In this misconception may perhaps be found the main, if not the only source, of the clouds, in which . . . Plato and Aristotle concurred in wrapping up the whole field of pneumatology [i.e., immaterial objects]. In the phantoms generated in their own brains, it seemed to them and their followers that they beheld so many realities.¹⁹

The confusion began with Plato, 'the grand original manufactory of moral unintelligibles,'²⁰ and continued relentlessly through the centuries.

Armed with the division between real and fictitious entities, Bentham first turned it against D'Alembert himself. The Frenchman took his encyclopedic tree, which was part of the 'Preliminary Discourse' in the first volume of the great *Encyclopédie*, directly from Bacon.²¹ It was a century and a half behind the times, and its division of the mind into memory, reason, and imagination was outmoded. In some cases, D'Alembert made distinctions that made no difference. In others, he failed to make the vital ones.²²

After criticism came construction. Happiness or eudaemonics was the central trunk and all human activities were branches of it. The principle of utility extended everywhere, to morals and legislation, and to poetry, agriculture, architecture, astronomy, botany, cooking, history, metaphysics and zoology as well. Bentham planned a gigantic analytic enterprise, the Utilitarian classification of every branch of knowledge. Abstract as his Tree might seem, there was a reformer's pragmatic purpose behind it. He hoped to show men the interdependence of everything they did, in order to persuade them of the wide and interrelated range of better things they might do.

Long before he finished, however, he dropped his vast project. This was characteristic. As his devoted friend George Wilson* complained in 1787, 'Your history . . . has been to be always running from a good scheme to a better. In the meantime, life passes away and nothing is completed.'²³ Wilson blamed Bentham's 'constitution', but that was only partly at fault. Bentham was a self-styled 'projector' or inventor as well as a practical reformer, and the two roles at times conflicted. His projects often soared beyond the limited practical possibilities. Sooner or later he realized this and came down to earth again.

So it was with his Encyclopedical Tree. He saw that his ambitions were, for the time being, over-inflated. The effectiveness of such a Tree waited upon preliminaries. What man did depended on the law's guarantee and the law could guarantee little until it became intelligible and widely known. This, in turn, presupposed a dictionary of the language of law and its

* A fellow student at Lincoln's Inn, a tall dour Scot, later leader of the Norfolk circuit.

incorporation in a written code. Bentham put his chart aside and turned to first things first.

Finally in 1815 he revived his early ambition. He joined James Mill and Francis Place in planning a Lancastrian School 'for the use of the middling and higher ranks of life',²⁴ and even offered part of his garden at Queen Square Place as a location for it. Nothing came of their plans. The committee members quarrelled; not enough money could be raised; and Bentham withdrew his offer, perhaps appalled at the prospect of noisy schoolboys trampling his flower beds. Yet before he lost interest he was so aroused by the idea that he drew up an educational handbook, *Chrestomathia*. In it he outlined a new curriculum, strong in natural science and void of religion. To give the proper Utilitarian perspective he at last completed his Encyclopedical Tree.* Aside from its forbidding Greek-rooted neologisms, it is a faithful fulfilment of the job he set himself when he first read D'Alembert in 1769.

Bentham was lavishly grateful to D'Alembert, to whom he wrote another of his unsent letters.

As you will see, my system is based on the ideas of M. Helvétius.

O my master, the two of you first put me on the track. . . . From him I got the torch which one day I hope to carry to the narrowest regions of politics and perhaps morals. From you I got the thread through the labyrinth of human knowledge. . . .

When you die, I shall cry, as I cried for M. Helvétius [who died in 1771]. I shall never see you: you are old: I am young: . . .

Goodbye, my master: you doubtless have more worthy disciples – you can have none more grateful than the Englishman whose name is Jeremy Bentham.²⁵

The supreme value of legislative reform, the corroboration of Priestley's greatest happiness principle, the definition of happiness in terms of pleasures and pains, the fundamental importance of clear well-grounded definition for scientific advance: all these insights Bentham first found in Helvétius and made his own, later confirming them among other *philosophes*. A beginning calculus of pleasures and pains: this was Beccaria's gift, later seconded by Maupertuis and Voltaire. The distinction between real and fictitious entities and the vision of an Encyclopedical

* See Appendix A. This chart was folded, like D'Alembert's in the *Encycpédie*, into the original edition in 1816.

Tree: these he owed to D'Alembert. This completes the list of the specific doctrines Bentham adopted from the *philosophes*, but it by no means exhausts their less direct influences.²⁶

Inevitably these men were all children of the eighteenth century, classically educated and dissatisfied with Aristotelian logic, spurred on by advances in the physical sciences to their own amateur experiments and to the application of scientific method to morals and legislation. They were all polymaths, reformers, projectors, interested in everything, critical of a multitude of evils, and eager to suggest improvements.

Even a man so totally unlike Bentham as Diderot shared a whole range of opinions with him. Diderot was mercurial and sensual; Bentham was calm, shy, ascetic. He seems to have found Diderot's mind uncongenial, for in all his thousands of pages he mentioned him but once, briefly. Yet both held similar views about the great and underestimated motive power of sex.* They bequeathed their corpses for dissection, convinced that medical progress depended on intimate knowledge of the body. They went to Russia, ardent admirers of Catherine the Great and her projected reforms-from-above. Diderot planned a new Russian university for her with a curriculum similar to Bentham's Chrestomathic one. They both began with technology, arithmetic, physics, the natural sciences, and ended with the humanities.

Their æsthetic theories were also alike. They emphasized the moral role of art and considered the stage a fine arena for object lessons in good and bad behaviour. Their concern for fixing the meaning of moral and political language was shared by most of the *philosophes*, and Diderot also was anxious to found a new logic. His, however, was to be a logic of process that advanced beyond Aristotle by taking account of time and foreshadowed Hegel's thesis, antithesis, and synthesis.²⁷ Bentham's logic of the will moved forward from Aristotle by ever more exhaustive analysis. He wanted to dissect commands and questions and not merely assertive sentences.

Like many of the *philosophes*, Bentham was a covert feminist, eager to put the untapped brains and energy of women to use but wary of deep prejudices. As Diderot, Holbach, and Hume condemned the conventional harsh treatment of suicides, so did

* For Bentham's reflections, characteristically offered as a better alternative to English law, see below, Chapter 5.

Bentham. He and his French contemporaries were deeply interested in the social and economic changes they saw in the making, and preached a new set of middle-class values to go with them. They believed in the dignity of manual labour, the unsung merits of the working man, and the advantages of thrift.

For over a dozen years after he discovered the principle of utility, Bentham devoted himself largely to the subject he knew best – the law. He worked tirelessly to define and classify offences and punishments, civil and penal law. In the meantime he took most of his opinions on other subjects on trust. In this way his political opinions were a blend of the Tory attitudes his father taught him and his readings in Delolme, whose *Constitution de l'Angleterre* he thought the best book on the subject. For the most part Delolme followed the accounts of his predecessors, Voltaire, Montesquieu, and Blackstone, and accepted the convention that the success of English government depended on equilibrium between King, Lords, and Commons, and the legislative, executive, and judicial branches.²⁸ Eventually Bentham saw with his own eyes that, whatever the myth, the facts were otherwise.

In the same way he initially took his economic opinions from Adam Smith. Until Bentham went to Russia in 1785 he paid little attention to economics and considered *The Wealth of Nations* gospel. Gradually, after he made independent investigations, he came to different conclusions on separate issues. He offered some of them in his famous *Defence of Usury*.²⁹

Bentham had of course read and appreciated Montesquieu. He valued *L'Esprit des Lois*, however, more for its intentions than its performance. He recognized that Montesquieu attempted the same rare, beautiful, and very difficult task he set himself. They both sought to be lawyers and philosophers, bringing what is and what *ought to be* together for the first time. They both found their ambition in Bacon's *The Advancement of Learning*. Like Montesquieu, Bentham wanted to bridge the gulf between the lawyer's particular facts and the unsupported general propositions of the philosopher.

Montesquieu has attempted such a bridge: Montesquieu was the first architect who saw the possibility of it. . . . But his structure neither having any solid foundation on the shore of Philosophy nor reaching home to that of law, nor being built of any other than light

and crumbling materials is unable, as men already begin to see, and to acknowledge, to stem the tide of time.³⁰

Montesquieu failed, according to Bentham, because he knew too little of scientific method. His generalizations were made from insufficient evidence and were often false.

Bentham borrowed whatever, whenever, and wherever he could. He took not only his doctrines from the *philosophes* but his early epigrammatic style as well. He was not a natural writer and his first imitations were laboured. Sometimes he had only a few sentences to show for a whole day's effort. In time his persistence triumphed and clear terse prose poured from his pen with almost Voltairean ease and brilliance.* His friends' encouragement pleased him. In 1777 he wrote to his brother Sam:

Yesterday I shew'd Wilson a Chapter or two – [of the manuscript that that was printed in 1780 as *The Principles of Morals*] he bobbed his head de tems en tems, and the 'just-so's' came very thick one after another. Speaking of a part he happened to have in his hand I expressed my doubts whether it would not be thought heavy and abstruse. By no means, he said: he did not see how it was possible any thing should be clearer: he did not see how it was possible any body could help understanding me. . . . Coming to a note – 'Ay now, I like that note – It's a damned good note that.'³¹

But the deeper Bentham dug into the mine of definition, the more distinctions he unearthed and the less satisfied with the style of the *philosophes* he became. Epigrams, he saw, could not carry the subtleties and qualifications that empirical generalizations demand. He confessed his dogmatism and burned his more glib manuscripts. Some of his early conclusions, he conceded, were drawn rather from books than experience. They had been wrong. In 1797 he described the fate of an essay on tax collection written around 1776:

Adam Smith has drawn his hobgoblin and written under it Farmer General†. . . . I don't know whether it was before or after A. Smith's

* In 1822 Bentham also credited his style to 'the influence of the Crown' Dunning, a leading barrister at the King's Bench, X, 241. Sir Francis Bacon also influenced him, see below pp. 129-41.

† Bentham here refers to *The Wealth of Nations*, Book V, Chapters II and III, where Smith's well-known dislike of the farming-out system of collecting taxes is presented.

book came out, that I too must be drawing my hobgoblin. Like Smith's, the colouring of it was French: I believe Montesquieu could not have done it better: . . . for it was all epigram: consequently all false: . . . after it had undergone its probation on the shelf for more than Horace's term of nine years . . . I threw it into the fire.³²

Bentham's homage to the *philosophes* was intensive but it had a rather short life. By 1780 his tributes had become few; by 1782 they had almost disappeared. He rarely referred to them again, with the natural exception of D'Alembert, whose encyclopedical tree was a jumping-off point for *Chrestomathia* in 1815. This was again very characteristic. Bentham was a man in a hurry, anxious to do something that had never been done before: an exhaustive analysis of the entire structure of command based on the facts of English law and life. These he had to observe for himself. The *philosophes* could and did set the loom. They gave him his preliminary general principles but he wove them together in such a massive way that their quantity changed their qualities. In Bentham's astonishingly productive workshop these principles were transformed. He did not refer to them because they were no longer relevant.

In 1820 Bentham was stung by Lord Brougham's charge of having dealt more with books than with men. 'No man,' he retorted, 'ever copied so little from books.'³³ Following upon his once lavish tributes this seems contradictory. It is not, for both kinds of statement were true when he made them. Dicey was not wrong to claim that Bentham was 'in spirit entirely a child of the eighteenth century',³⁴ but it was true only in the eighteenth century. Bentham's mind was invincibly pragmatic. He took what he could use from books and then put them back on the shelves. His thought had three ages: borrowing, invention, and practice. He took in order to make; he made in order to give. If he dedicated himself to a new science, founded on the principles of the *philosophes*, he did so because he was sure that it could be used to make his England a better place to live.

As he grew older he changed his mind about the relative value of theory and facts. He began to see that books announcing general principles were worth only so much as the facts they were based upon, but that under anarchic and amateur eighteenth-century governments little reliable information was available.

Providing and publicizing detailed statistical evidence, therefore, became another of his great passions.

This was one reason why he abandoned the *philosophes*. Brilliant as some of their insights were, they were often no more than lucky guesses unsupported by empirical evidence. Bentham turned instead to observation. He talked to men in power, asking them what they did and how they did it.

There was another reason. One of the first questions he had to answer after dedicating himself to law reform was, whom should he address? He wanted to find an effective audience, one with ears to listen and the power to act as he bade. His success was late and small, and many of the changes in his thought can be explained as adaptations to new audiences. Many circumstances combined around 1790 to make him a democrat, but one of them was his failure to find converts among the members of government. Regardless of whom he addressed, however, he knew how radical his proposals were and how comfortable established prejudices are. He was always ready to make concessions to custom and to speak to his audience in its own language. Nor was he often successful here either, but it was not for want of trying.

When Bentham first discovered utility, most literate Englishmen were familiar with Montesquieu, Voltaire, Marmontel, and Diderot's *Encyclopédie*. Through the 1770s, at least, there was a good market for their works, and Bentham himself got high fees for translating Voltaire's *The White Bull* and Marmontel's *The Incas*.³⁵ After the French Revolution, however, anti-French feeling ran so high that it was considered near treason to praise the *philosophes*. But even before then they were losing their popularity. Though '*philosophe*' was an indiscriminate label used to identify many dissimilar people, Englishmen tended to apply it to all recent French writers and to curse them all for the rampant materialism of a fringe few. Englishmen would have their materialism and their religion too; and Archdeacon Paley's *Principles* rather than Bentham's became the standard ethical text at Cambridge.

In the same spirit, few books were so well hated as Holbach's openly atheistic *La Système de la Nature* (1770). At least one measure of the depth of this hatred is the fact that Bentham never once mentioned the book though many of its ideas were congenial to him. He knew that, even taken alone, his more obvious

law reforms faced strong opposition. Joined to unsympathetic metaphysical or anti-religious opinions, there would be no audience for them at all.

A Proper Englishman.

Little by little, then, Bentham's references to the *philosophes* became scarcer and scarcer. Almost as much can be learned about his thought from those he avoided as from those he thanked. He never referred to Holbach and mentioned Diderot only once. In his early manuscripts he ascribed his definition of metaphysics, as the science of the meaning of words, to Helvétius. In his 'Logical Arrangements', written at various times up to 1814, he referred it to Lord Bolingbroke.

More curious is his neglect of Hobbes, who was in countless ways very similar to him. They were both charming, childlike old bachelors, spry tennis or badminton players, and afraid of ghosts. They combined orderliness, timidity, and self-complacency. Both were critics of Aristotelian logic and took a life-long interest in mathematics and scientific experiment. Both read Coke on Littleton and Bacon's *Elements of the Laws of England* and were stirred to law reform. If Hobbes worried about the ever-powerful influence of Church on State, so did Bentham. They held similar theories of sovereignty, and Bentham's view of liberty as made and guaranteed by law is pure Hobbes. Taine saw the similarity and described their minds unsympathetically as 'efficacious and remorseless as an iron machine'.³⁶

If both wanted to construct a complete system of morals and politics, they were convinced that a clear dictionary and a sound psychology were necessary preliminaries. What Aubrey said of Hobbes fits Bentham as well. 'Now all men will give the old Gent that right as to acknowledge he is rare for Definitions. . . .'³⁷ They were both nominalists: universals are but names; if they cannot be reduced to individual perceptions, they are meaningless.

Bentham and Hobbes were unique in the history of English thought for their insight into the political origin of many linguistic fictions and for seeing the legislator as first of all a lexicographer. In *Elements of Law* Hobbes defined sedition as arbitrary misuse of language. In the state of nature quarrels arise because men differ over the names of things, of what is meant by right, good, virtue, *meum*, and *tuum*. He and Bentham agreed that

the first job of government is settling the meaning of political and ethical abstractions. Rights, duties, property, and justice are legal constructions. He said, 'Where there is no common power, there is no law: where no law, no injustice.'³⁸

Hobbes was perhaps an even more determined calculator in morals and politics than Bentham. Sterne complained that his equations 'plussed or minussed you to heaven or hell . . . so that none but the expert mathematician would ever be able to settle his accounts with Saint Peter.'³⁹ Hobbes defined reason as a reckoning process, applicable not only to numbers but to the acts of men. 'In sum,' he said, 'in what matter soever there is place for *addition* and *subtraction*, there also is place for reason: and where these have no place, there *reason* has nothing at all to do.'

Yet Bentham praised him only once, in guarded words.

The paradoxes of Hobbes . . . were of service: they contained many original and bold truths, mixed with an alloy of falsehood, which succeeding writers, profiting by that share of light which they had cast upon the subject, have been enabled to separate.⁴⁰

All the same, it seems very probable that Bentham was influenced by him. But Hobbes was anathema in eighteenth-century England and Bentham saw no point in arousing even more hostility than he already had to face. Then, too, like Harrington, Grotius, and Pufendorf, Hobbes wrote about the general principles of constitutional law, and the young Bentham saw no advantage in covering the same ground. He wanted to do the kind of specific detail work that had never been done before. When ultimately he decided that constitutional law, the law creating and regulating political power, was the most important of all studies, he no longer read theoretical treatises.

The same concern for public opinion helps to explain Bentham's life-long preoccupation with Blackstone and Locke. They were gospel for every educated Englishman and he had to come to terms with them. In order to be understood he sometimes borrowed their vocabularies to express his own ideas; the devil quoted scripture for his own purposes. Sydney Smith admitted as late as 1826, 'Nothing can be done in any discussion upon any point of law in England, without quoting Mr Justice Blackstone.'⁴¹ Other philosophers were interesting to Bentham

if their ideas were popular, and he therefore wrote at length about Hume on corruption, Locke on property, Godwin on political justice, and Burke on sinecures and pensions. But he faced a dilemma that he never entirely resolved. He could begin *de novo*, without any reference to the common intellectual heritage, and alienate everyone; or he could use the old context and risk ambiguity. Though he wavered between them, he chose the second whenever possible.

Here is another irony of Bentham scholarship. Some critics have taken pains to show how unoriginal Bentham was. They use the reductive fallacy and suppose that by tracing the origin of his ideas to the *philosophes* they have disposed of him as a thinker. They have not. Their researches may be interesting but they miss the vital question. What did Bentham do with these ideas? And why stop with the *philosophes*? They made few claims of originality. Diderot's *Pensées sur l'Interpretation de la Nature* was modelled on Bacon's *Novum Organum*.⁴² When Helvétius' *De l'Esprit* was published in 1758 the furore it created was surprising. The orthodox were outraged; the Council of State withdrew the publisher's licence; the Archbishop of Paris and the Pope preached against it. And yet, as everyone agreed and despite its explosive effect on Bentham, there was little new in it.⁴³ It was a rather conventional account of a behaviouristic ethics. Perhaps, as Mme du Deffand said, Helvétius upset everyone so much because he revealed their secrets.⁴⁴

There is no end to the search for originality. It seems futile to pursue it. It is true that Bentham and the *philosophes* had many things in common and perhaps nothing more than this: they were all children of Locke and Bacon. Bentham's intellectual heritage was English. This is a vital fact. He was an Englishman speaking to his countrymen about English conditions. His language was their language. Years before he discovered Helvétius and Beccaria, he had read the classics of English philosophy, and he continued to refer to them throughout his life. It is true as well that Bentham did not much value Hume and Locke until the *philosophes* showed him why and how he should. After 1769 he understood clearly what Hume meant by 'utility', and Locke by his abstractions or 'mixed modes'. Utility was pleasure and the absence of pain: he found his early intuition confirmed by Helvétius. After reading D'Alembert he saw that fictitious entities were Locke's 'mixed modes'.

If Helvétius was one of Bentham's gods, Locke was another. 'Without Locke,' he once said, 'I could have known nothing.'⁴⁵ Without them, he acknowledged, his career as a legal reformer would have been impossible.

A digest of the laws is a work that could not have been executed with advantage before Locke and Helvétius had written: the first establishing a test of perspicuity for ideas; the latter establishing a standard of rectitude for actions. The idea annexed to a word is a conspicuous one, when the simple ideas included under it are assignable. This is what we owe to Locke. A sort of action is a right one, when the tendency of it is to augment the mass of happiness in the community. This is what we are indebted for to Helvétius.

The matter of the Law is to be governed by Helvétius. For the form and expression of it we must resort to Locke.⁴⁶

If Helvétius taught Bentham the need for a dictionary, Locke showed him how to define the words in it. Bentham borrowed his epistemology, such as it was, from *The Essay Concerning Human Understanding*. And so did Helvétius, as Bentham was aware. He cried, 'Oh Locke! first master of intellectual truth! without whom those who have taught *me* would have been as nothing!'⁴⁷ Locke's sensationalism was an unalterable fundamental of Bentham's thought and the starting point of his new mode of definition, paraphrasis. He assumed that Locke's description of the direct or indirect origin of all ideas from sense impressions and the possibility of reducing all complex to simple ones was correct. Paraphrasis was his own way of reducing fictions to concrete images.*

There were few people whom Bentham loved and admired more than Hume. He respected 'that prince of historians' for his large-minded tolerance and independence, and his 'dispassionate, acute, and comprehensive mind'.⁴⁸ But after the early 1770s Bentham referred to Hume sparingly, as always alert to public opinion and aware that his scepticism was becoming almost as unwelcome as Hobbes' nominalism. Even after conceding everything that might be urged against the *Treatise*, however, Bentham insisted that 'there will still remain enough to have lain mankind under indelible obligations.'⁴⁹

Hume had one failing, according to Bentham, and it was a

* See Chapter 4 below. For a further account of Locke's *Essay*, see Cranston, *op. cit.*, pp. 264 ff.

common and natural one. Though his insights were remarkable, he did not carry them far enough. Sometimes he neglected their causes; at other times, their implications. Aware like Bentham of man's deep-rooted habits of substantialization, Hume noticed that people make things of abstractions like cause and power; but he did not trace this disastrous habit to its source in the structure of language itself.⁵⁰

Bentham borrowed from Hume as he borrowed from everyone: freely, discriminately, candidly, and gratefully. He thought that Hume had disposed of the myth of original contract so conclusively that the task need not be done again. He also reaffirmed Hume's fundamental distinction between impressions and ideas, which he agreed is 'necessary to every clear and correct perception of the phenomena of the human mind.'⁵¹

But perhaps nothing he ever appropriated was more valuable to him than Hume's distinction between *is* and *ought*. In *A Treatise of Human Nature*, Bentham acknowledged, Hume was the first to indicate:

how apt men have been, on questions belonging to any part of the field of Ethics, to shift backwards and forwards, and apparently without their perceiving it, from the question, what *has been done*, to the question, what *ought to be done* and vice versa: . . . To every eye, by which those two objects have not been completely separated from each other, the whole field of ethics . . . must ever have been, – yea, and ever will be, – a labyrinth without a clue.⁵²

Here was another example of Hume's shortcoming. Bentham claimed, 'But such is the force of habit and prepossession, after pointing out the cause of error, he continued himself to be led astray by it.'⁵³ With the most 'inconsistent oscitancy', Hume wandered between the principle of utility and a moral sense as standards of right and wrong.

Bentham himself never confused the *is* and the *ought*, for all the customary charges that he did.* For him an 'ought' statement is a

* Halévy may stand for them all. He said: 'Now if this [confusion of normative judgments and descriptive statements which Hume warned against] involves a *petitio principii*, the objection applies to Bentham, since his dominating idea is just this – that he has discovered in the principle of utility a practical commandment as well as a scientific law, a proposition which teaches us at one and the same time what is and what ought to be.' (*The Growth of Philosophic Radicalism*, p. 12.) According to Bentham, however, the

value judgment; an 'is' statement is a description of fact. The first cannot be reduced to the second. Of course a value judgment rests on facts, and it is only as valuable as these supporting facts are complete and accurate. As a reformer, Bentham needed accurate descriptions of what people do before he could suggest feasible better things they might do. His approach was throughout one of pragmatic common sense.* A more valid charge is not that he confused 'is' and 'ought' statements but that their contents were thin. Disheartened by his inability to find reliable social evidence for the descriptive parts of his system, Bentham eventually abandoned his normative constructions. Though indirect legislation was his final visionary union of 'is' and 'ought', he never fully articulated it. But in eighteenth-century England this deficiency was inevitable and ineradicable.⁵⁴

The Devil Quotes Scripture.

Through the 1770s the only world Bentham knew well and could generalize about was the legal world. If he made exhilarating free-wheeling excursions among the classics of philosophy, he soon came back to Blackstone. As he borrowed from congenial spirits, so he borrowed from his enemies. Nowhere is his method more striking than in his use of Blackstone. A subtle, critical, creative adapter, Bentham tried to minimize his heresies by quoting as much of the gospel according to the *Commentaries* as he could.

Ironically, the greatest defender of English law and its greatest critic had the same ambition. They both wanted to systematize it and create a science of legislation. They deplored the average Englishman's ignorance of the law and hope to teach it in schools like any other organized body of knowledge. They both offered 'reasons' for the law, however distant their standards of explanation were.⁵⁵ Blackstone was in fact the first Englishman to write a full systematic analytic treatise on the law. Bentham was

principle of utility is not a law; it is an opinion, a normative social resolution, an act of the understanding; and a law is a command, an act of the will. See Chapter 4.

* The question of the relation between 'is' and 'ought' statements is still alive. See the discussion between R. F. Atkinson and A. C. Montefiore, '“Ought” and “Is”', *Philosophy* (January 1958), pp. 29-49.

much impressed by his large-scale divisions but thought they were muddled and incomplete. He wanted to do the same analytic job and he was certain he could do it better.

Once again Bentham generously acknowledged his debt – with qualifications.

Through him I know what I know: but for him I might very likely have known nothing. But for him I might never have bent my infant mind to this forbidding science. Through him I found instead of disgust, amusement: . . .

Setting out from the point at which he stopped, if in any point of view I should have happened to see further than him the merit may have been more his than mine – I may have been but the dwarf upon the Giant's shoulders – . . .

I have from nothing within the compass of jurisprudence derived so much advantage, as from the Map of Jurisprudence which stands prefixed to his analysis. Yet this I also know, that I began not to derive from it any benefit, till I began to discover what seemed to me imperfections. It was then, and not till then, that I began to understand . . . it.⁵⁶

Bentham adopted the word 'sanction' from Blackstone, extending and developing it in his own way until it became a basic part of his psychological analysis. Bentham defined it as 'a source of obligatory powers or *motives*: that is, of *pains* and *pleasures*'.⁵⁷ It was a general term for classes of pleasures and pains when they operated as spurs or hindrances to action. Sanctions are 'the various forms in which the fear of consequences check a man in the pursuit of what may be his own individual pleasures'.⁵⁸

They may also be considered as pleasures and pains taken sociologically. Every society evolves rules of behaviour, some enforced by substantive law, some not; and sanctions are the groups of pleasures and pains which serve as inducements to obedience. Originally Bentham distinguished four classes of them: physical, political, moral and religious. Later, in his usual style, he became dissatisfied with his early over-simplification and finally listed fourteen sanctions.*

In the *Commentaries* Blackstone often referred to 'the sanction of law' or 'the sanction of religion'. Bentham knew that there were others. The pressures to conform are not all explicit and institutionalized. He invented the popular or moral sanction to

* See below, Chapter 5.

account for the less obvious forces of public opinion. He coined the phrase 'political sanction' to cover all operations of political power, including legal and administrative.⁵⁹

Blackstone suggested another one of Bentham's basic analytic devices: the three-fold division of the necessary conditions of human action. In the *Commentaries* Blackstone had listed the requirements of good government: wisdom, probity and power. Bentham extended this list to cover good or Utilitarian behaviour of any kind whatever. In 1814 he said:

With reference to government in the highest stations and in those only are these conditions and qualifications brought to view by Blackstone. . . .

With the help of . . . amendments . . . it appeared to me capable of being with equal propriety and utility applied in the political descending line to all subordinate situations – in the next place to the accomplishment of any object whatsoever.⁶⁰

Unlike many of the doctrines he borrowed, such as sanctions and the principle of utility itself, Bentham made few changes in this division. In 1782 he distinguished between power, knowledge, and will. In 1814 his analysis was a little more elaborate. The primary division was power and will. Power was either *ab intra* (knowledge and active talent) or *ab extra* (extent and degree of social compliance). Probity was will seen as moral obligation.⁶¹ In his last work, the *Constitutional Code*, he still insisted that the necessary conditions of good government were talent, probity, and active power.

To Blackstone, wisdom, probity, and power were all good things; his description had favourable overtones. And so usually had Bentham's. But in due course he replaced these emotionally charged words with neutral ones, and wisdom, probity and power became the intellectual, the volitional, and the active parts of the mind. In one of his last repetitions he said:

The intellectual – the volitional – and the active; – into these three branches the whole texture of the human mind has . . . been considered as divided; – the intellectual including perception, knowledge, and judgment; – the volitional, designated by the one

word *will*; – and the active, by which execution and effect is given . . . to . . . the laws enacted by the will.*

There was still a third way that Bentham quoted Blackstonian scripture for his own purpose. He invoked the same popular fiction of office as a public trust. It was, however, not new with Blackstone but at least as old as Locke. Of all the fictions that Blackstone paraded so proudly, none was more useful to Bentham than this one. It is the key to his political theory, one which he used dozens of times to open his discussions of power and its responsibilities. Once again the devil quoted scripture, for as Sir Frederick Maitland said, perhaps 'the great and most distinctive achievement' of English jurisprudence was 'the development from century to century of the trust idea.'⁶² Once again Bentham's ideas changed and developed. At first his concern was characteristically analytic. He defined 'trust' as one among many terms in his new dictionary. He mentioned it briefly in a footnote in *The Principles of Morals*. There he merely classified breach of political trust as a subdivision of public offences.⁶³ A year or two later he took a wider view. In *The Limits of Jurisprudence Defined* he defined law as command or power, and trust as fiduciary power.

Power is either over things or persons: and in either case it is either beneficial [over oneself] or fiduciary [over one or more other individuals]. When fiduciary it is coupled with trust. What concerns beneficial power, whether over things or over persons, and fiduciary where the benefitee is an individual, or an assemblage of individuals belongs to Private Law: what concerns fiduciary power where the benefitee is the whole community or a class of assignable individuals, belongs to the public or Constitutional branch.⁶⁴

Bentham delayed so long in developing a political theory not only because he was preoccupied with preliminary analyses of civil and penal law but because his definitions led him to under-rate the importance of constitutional law. He saw it merely as that branch of civil law which concerned public property in trust.

Constitutional power is property in trust. Therefore the foundation

* III, 234, 'Nomography', parts of which were written as late as 1831. Like the 'Pannomial Fragments' which precedes it and 'Logical Arrangements' which follows it, this essay is an important fragment of Bentham's arcane philosophy.

of the Constitutional Code will be laid in the Private Civil Code. In a certain respect the Constitutional Code is the private civil code over again. . . . The sovereign being the *master in trust*, that is, the *guardian* of his subjects.⁶⁵

Slowly he changed his classifications. After he became intimate with Lord Shelburne, who was Prime Minister in 1782–3, Bentham saw for himself how political power was used and abused. Constitutional law took on a growing importance and eventually became first in the order of his interests and first in the order of his analytic hierarchy. And so the history of Bentham's political thought is the history of his developing concern with constitutional law – and with political power as a large-scale trust. As his interest increased, his use of the fiction, power-as-trust, shifted. It had been a product of analysis merely. It now became an instrument of argument and persuasion as well. He finally understood how people used this elegant fiction to cover shabby or mundane motives. For all their tedious repetition, power was not a moral trust in eighteenth-century England. It was personal property.

Sir Frederick Maitland once said, 'Our whole constitutional law seems at times to be but an appendix to the law of real property.' Bentham would have agreed with him. In his world office was bought and sold and often bequeathed. What Sir Lewis Namier said of the House of Commons in 1760 held true throughout Bentham's life:

The majority of seats in the House had a quasi-proprietary character – they were a valuable inheritance or a costly acquisition, from which proper returns were expected.⁶⁶

When Charles James Fox brought in his bill to reform the East India Company, the alarmed Committee of Proprietors sent circular letters to most town and corporate bodies in Great Britain. They warned simply, 'Our property and charter are forcibly invaded. Look to your own.'⁶⁷ No one, however, spoke of outright ownership of office. That would have been too crude. Instead, men invoked the fiction of office as a public trust and tried to persuade themselves that it was true.

When Bentham saw that his own cool systematic analyses of trust were no match for Blackstone's panegyrics, he changed his

tactics. Discouraged by the frigid reception he received, Bentham put them aside in 1782 and turned his attention to new subjects. When he returned to discussions of trust in 1790 and after 1809, he used the word as tendentiously as his opponents. He no longer spoke of political trust as a minor subdivision of civil law but as a triumphantly proclaimed self-evident first principle. This is the starting-point of two massive important unpublished manuscripts on political theory. In *Parliamentary Reform* (1810) and *Abdication* (1811)⁶⁸ Bentham announced: members of Parliament are trustees. He tried to persuade people that, according to Blackstone's definitions of trust and forfeiture, the House of Commons had abdicated its trust. Members no longer held their seats for the benefit of their electors, as they should do, but unconstitutionally for their own advantage or for the benefit of the Crown.

Almost every interest of Bentham's has a changing history and his relation to Blackstone is no exception. When he first heard the *Commentaries* delivered at Oxford in 1763, he was bewildered by legal fictions. When he read them later in print, he was furious at Blackstone's absurd justifications of archaisms and the hollow eulogies of non-existent institutions. He poured out his wrath in *A Fragment on Government* in 1776. The *Letters of Junius* had made vituperation popular and Bentham saw no need to restrain himself. As we know, he also saw how firm and fast a hold the *Commentaries* were taking on public opinion, and he tried to crush them ruthlessly before they spread further and killed the chance of a hearing for his own system of reform.

Nor for the first few months after *A Fragment* appeared did he regret his violence. His anonymous book made a small sensation. Its style was vividly contemptuous. People wondered who wrote it. Was it Lord Mansfield? Lord Camden? Dr Johnson supposed it was John Dunning. Bentham's father was one of the few who knew the secret but his paternal pride soon overcame him and he divulged it. As the work of an obscure author, the book lost its popular interest and sales fell off. This Bentham had foreseen and was angry with his father, but it was some time before he understood that the book's success had depended almost entirely on the mystery surrounding it. Neither his heated attack nor his Utilitarian counter-offerings were welcome.

Bentham never criticized Blackstone in the same unrestrained way again. From the beginning he had foretold Blackstone's

success; now he tried to explain it. The very fact that Blackstone said nothing new was a vital part of his power. He told men what they wanted to hear and what they imagined they knew already, in an urbane and comprehensive way. He spoke in their language, vague and fictional though it was. Describing the conventions of the constitution, he adopted the customary eulogies of foreign commentators like Montesquieu. He never peppered his pages with neologisms, demanding exertions his readers were unwilling to make. Bentham did. Blackstone was comfortable and flattering. Bentham was not.

Yet Bentham was eager for an audience. What then did he do? He borrowed the popular vocabulary from Blackstone despite, or rather because of, the fact that the *Commentaries* were:

a source of national torpidity, [inculcating] . . . submission to authority not in *act* only, which is a source of peace, but in judgment which is a source of ignorance and stupidity.⁶⁹

Fifty years later Bentham fitted his analysis of Blackstone's popularity into his logic of the will. By analogy with classical logic it also included a list of fallacies. Blackstone was a buttress of the Fallacy of Authority.

A foolish or untenable proposition, resting on its own support or the mere credit of the utterer, could not fail speedily to encounter detection and exposure; — the same proposition, extracted from a page of Blackstone . . . shall disarm all opposition.⁷⁰

Bentham began to argue that there was nothing wrong with the conventions of the constitution and legal fictions as Blackstone so eloquently described them except that they were not true. Defenders of the *status quo* like Dr Johnson and Blackstone confused the 'is' and the 'ought'. They seemed to suppose that a glowing false picture gave added lustre to a dull set of facts. Bentham thought otherwise. A good institution needed no disguise. He suggested: let us make these fictions realities. Utilitarianism is not very radical; it asks only that the doctrines to which all pay lip-service be put into practice.

Magna Carta, for example, proclaimed, 'To no one will we sell, to no one will we refuse or delay, right or justice.' But fees and delays in the courts were notorious facts. Equality before the law was an excellent fiction but in eighteenth-century England

the poor were outlawed. Every man was presumed to know the law. How could he? It had formerly been written in Latin and was still hidden in impenetrable jargon in innumerable statute and case books. Under one of the conventions of the constitution, the supposed division of powers, the legislature legislates and the judges judge. In the courts, however, the judges made law regularly.

Since Bentham's universe of discourse was English law, his discussions were willy-nilly carried on in that world. If Blackstone was at the centre of it, Bentham had to adapt himself to that fact. His feelings toward Blackstone were mixed, a large portion of contempt blended with smaller doses of genuine admiration and strategic sense.

That Resplendent Genius: Bacon.

But of all the figures in the history of Western thought, none rose up more majestically in Bentham's imagination than Sir Francis Bacon. Of 'that resplendent genius'⁷¹ Bentham cried, '*Fiat lux*, were the words of the Almighty: — *Fiat experimentum*, were the words of the brightest genius he ever made.'⁷²

Like Bacon, Bentham had a gift for metaphor. His favourite source of parallels was Greek mythology, and he never tired of calling himself Telemachus or his adventures odysseys. When he spoke of the rivalry between Lord Camden and Lord Mansfield, they were Hector and Achilles.⁷³ But mythology offered no parallels for Bentham's own achievements, and he turned to many more recent sources for them. Sometimes he spoke of himself as a new Newton or a new Linnaeus; at other times, as a new Luther. This was poetic licence and should not be taken too seriously. There was however one great man whom Bentham resembled very nearly, and that was Sir Francis Bacon.

Utilitarianism was made of many threads from many thinkers, but for the pattern as a whole Bentham turned to Bacon. He borrowed the content of his thought from Priestley, Helvétius, Beccaria, Locke, and Hume, among others; but its form and method were inspired by Bacon. If Helvétius gave him his first vision of a new science of morals and legislation, his reading in Bacon confirmed it and showed him how it might be done. There he learned that the world of philosophy and the world of law are far apart and must be joined. Only a Statesman could bring them together. Bentham chose to become Bacon's Statesman.

From one passage in *The Advancement of Learning* Bentham was inspired to develop a new science, Critical Jurisprudence, a study of the area common to both philosophy and law. He valued these sentences so highly that he quoted them on the title-page of his youthful unpublished *Critical Elements of Jurisprudence*.^{*} This was a rare tribute. Bacon had written:

They who have hitherto written upon laws were either as philosophers or lawyers; the philosophers advance many things that appear beautiful in discourse, but lie out of the road of use; whilst the lawyers, being bound and subject to the decrees of the laws . . . write as in fetters. This doctrine, doubtless, properly belongs to statesmen, who best understand civil society, the good of the people, natural equity, the customs of nations, and the different forms of states.⁷⁴

Bentham accepted Bacon's description and continued:

Between us two might the philosopher and the lawyer say, there is a great gulph. I have endeavoured to throw a bridge over this gulph: so that on it, as on Jacob's Ladder, if not Angels, man, however, may continually be henceforth seen ascending and descending.

The Lawyer immersed in the muddy ditch of his *particulars*, scarce dares to think of mounting to the regions of Philosophy. The philosopher delighted and captivated by *his generals*, deigns not to sink into the gross world of law. . . .

Philosophy for want of more substantial stuff spinning with Cobwebs – Jurisprudence piling up in wide confusion a huge heap of odds and ends for want of spinning. Should I be found so happy as to succeed in bridging these celestial artizans into a more close acquaintance, what a rich and serviceable manufacture may not be hoped for from their united labours.⁷⁵

If there was some truth in Mill's charge that Bentham scorned other minds, it was because they spun so many insubstantial generals. His borrowings were highly selective. He jumped from Aristotle to Sir Francis Bacon to Locke, Hume, and the *philosophes* and paid little or no attention to many great philosophers – Plato, Descartes, Leibniz, Kant. Their classic disputes, he thought, were largely useless logomachy, and he began his own

^{*} Bentham wrote thousands of practice pages between 1769 and 1781. Some of them were incorporated in *The Principles of Morals*, printed 1780, which was itself only a small fragment of his monumental plan to analyse the entire structure of law.

career where theirs ended. They were philosophers merely; he was a Statesman.

Bacon had seen the gap between the 'is' and the 'ought' that Hume described, but in the early seventeenth century there were no facilities for collecting the facts upon which sound value judgments depend. Bentham viewed Bacon as a genius who was born too early. Through no fault of his he was no Statesman.

Montesquieu had also seen the gap, but his knowledge of English government was so amateur that he offered the balance of power myth as factual description. Bentham agreed with Helvétius that only an Englishman with legal training could do the job. Only such a man as he was himself, and Bacon had been before him, could know enough particular facts to make valid generalizations about English law and government. This was still another reason why he disengaged himself from the *philosophes*, with their scanty facts and bad inferences, and placed himself squarely in the direct English tradition as a disciple of Bacon. He abandoned them all the more readily when he discovered that they too were disciples of Bacon.

Like Helvétius, Bacon showed Bentham the importance of legislation. In the *Essays* he said:

The true marshalling of the degrees of sovereign honour are these. In the first place are *conditores imperiorum*, founders of states and commonwealths; such as were Romulus, Cyrus, Caesar. . . . In the second place are *legis-latores*, law-givers; which are also called second founders, or *perpetui principes*, because they govern by their ordinance after they are gone: such were Lycurgus, Solon, Justinian.⁷⁶

Through D'Alembert, Bacon inspired Bentham to make a complete outline of all human knowledge. Bacon's encyclopedical tree was totally different from Bentham's. The earlier one was, Bentham thought, useless under eighteenth-century conditions. Bacon's tree was a hierarchy. God was at the top, governing the created universe through a mysterious 'summary law of nature'. Below the 'summary law' was 'philosophia prima', a kind of distillation of general principles of the individual sciences. Below 'philosophia prima' lay the separate sciences: law, ethics, and politics based on two kinds of knowledge, rational and revelational; and the simpler natural sciences, based solely on induction. Bentham rejected this

dualist epistemology and its religious superstructure. He was resolutely secular and convinced that all knowledge is empirical. Man's happiness and not God was the centre of his thought. However, Bentham agreed with Bacon that a science of morals and legislation is normative, not merely descriptive. It states what ought to be.

In Bacon's science of jurisprudence these statements are maxims, or 'laws of laws'. They are Laws of Nature, ultimately given by God. At the same time they are historical generalizations.⁷⁷ For Bentham normative statements are value judgments. A good Utilitarian who says 'You ought to do X' means 'It is my opinion that if you do X, the measurable consequences will be better than those of any alternative.'

As D'Alembert's Tree had been taken from Bacon, the anti-Aristotelianism of the *philosophes* had filtered down to them from Bacon through Locke. It filtered down to Bentham as well. Both Bacon and Bentham first became dissatisfied with Aristotelian definitions and logic at school when they were sixteen, on the same Utilitarian grounds. They agreed with Dryden that:

The longest tyranny that ever swayed
Was that wherein our ancestors betrayed
Their freeborn reason to the Stagirite.

Bacon thought that Aristotelianism was 'incapable of producing works which might promote the well-being of man'.⁷⁸ Bentham added in 1814:

Is it the . . . sole universal end . . . well-being i.e. the maximum of pleasure alloyed by the minimum of pains? Not it indeed: . . . It is confined in the first place to mere knowledge. But except in so far as it leads to . . . happiness what is all the knowledge in the world worth? – Just nothing.

In the next place . . . it is not so much as the whole of knowledge. Persons and things – [these are] . . . the subjects of knowledge: of the two, persons, one should think the most interesting: but to persons . . . it does not so much as profess to extend: it confines *itself* to things. . . .

The knowledge of words – viz. of the import of words, this was . . . the sum total of their researches.⁷⁹

Nevertheless they respected Aristotle wholeheartedly – in his time and place. Bentham described his logic as ‘considering its date, [a] justly admired and venerated monument of human industry and genius’.⁸⁰ What they deplored was Aristotelianism – the unimaginative repetition of time-bound methods in new eras. Certainly Bentham admired Aristotle vastly beyond Plato, for whom he had not one good word to say. He considered Plato the ‘spoilt child of Socrates’, in whose ‘vast wilderness of words’ not a single clear or instructive thought could be found.⁸¹

Nor was it possible for Bentham simply to dismiss Aristotle. His work was bounded by an ideological world that included Aristotle as well as Locke and Blackstone. Since all his thought took shape pragmatically, he could not set his own tone and pace and terminology. They were fixed for him by the conditions he reacted against. As Blackstone was the grey eminence of his legal discussions, so Aristotle loomed behind his logic. Blackstone was standard at the Inns of Court; Aristotle was standard at Oxford and Cambridge.

Therefore as Bentham framed his political theory in terms of power as trust, he used the Aristotelian language of means and ends, form and content, and the doctrine of material, formal, final, and efficient causes in his logic. He described sanctions as ‘efficient causes’ and characteristically decided that however useful Aristotle’s list of causes might be as a classificatory device, it was incomplete. He therefore added others – physical, historical, and rational.⁸²

Yet even Bentham’s logic had an English ancestry. Some years after he left Oxford, he read James Harris’ *Hermes* (1751), a philosophical inquiry concerning universal grammar. Though Harris was mistakenly Aristotelian, Bentham also thought that *Hermes* was in many ways a provocative and original book. It encouraged him, at any rate, to make problems of language and volitional logic his central interest. In his old age he too attempted a universal grammar.⁸³ It was while reading *Hermes* that he rediscovered the method of exhaustive bifurcation that he had first found in Bishop Saunderson. Suddenly he realized how useful it could be for a science of legislation.

Bacon’s mind was so prodigally fertile that his ideas spread to every corner of Western civilization. Bentham found them second-hand not only among the *philosophes* but in Blackstone and Locke as well. The distinction between will and under-

standing, the starting-point of Bentham's logic of the will, was suggested by Blackstone's wisdom, probity, and power, but it was also a Baconian one. In *The Advancement of Learning* Bacon distinguished between logic and ethics. 'Logic treats of the understanding and reason, and ethics of the will, appetite, and affections; the one producing resolutions, the other actions.'⁸⁴

He might also have gone to Bacon rather than Locke for his epistemology. He might even have found it in Aristotle: 'Nihil est in intellectu quod non prius fuerit in sensu.' They all developed epistemologies based on sense impressions.

Bentham accepted Bacon's account of induction as far as it went. But he knew that his own new science of morals and legislation was only partially analogous to the natural sciences. Bacon's motto was *Fiat experimentum*. Bentham understood how intractable human beings are and how few controlled experiments could be made upon them. His own motto was, therefore *Fiat observatio*.*

Although Bentham's single secular universe was radically different from Bacon's dual world of reason and revelation, this difference was largely one of time and place. In education, peculiar talents and habits, interests and ambitions, they were alike.

Both were Englishmen bred to the law. They were alone among philosophers in their thorough professional knowledge and uniquely equipped for law reform.† Bacon went to Trinity College, Cambridge and Gray's Inn as Bentham went to Queen's College and Lincoln's Inn. In 1618 Bacon was appointed Lord Chancellor. He made a profession of the law; Bentham did not. Bentham was admitted to the bar in 1769, and his father's city friends sent him cases, but he soon renounced a lawyer's life and chose to become an independent reformer. Both Bacon and Bentham were legal critics, reformers, and codifiers, but Bacon needed and wanted money and Bentham did not. This simple fact marks one difference between Bacon's somewhat conservative programme and Bentham's radical one. If Bacon further

* For a fuller discussion of Bentham's adaptation of scientific method to morals and politics, see below, Chapter 6.

† When Hobbes was an old man he too began to consider the problems of law and law reform. See his 'Dialogue between a Philosopher and a Student of the Common Laws of England', *English Works of Thomas Hobbes*, ed. Molesworth (London: 1839), VI, 1-160. But Hobbes was not a trained lawyer.

supposed that his partial reforms had more chance of success than a thorough overhaul, he was wrong. When he died in 1626 the common law was entering one of its strongest hours as a bulwark of the Parliamentary party in the struggle against the King that led to the Petition of Right in 1628.

As reformers, however, they both had the same vision: legal certainty. Bacon's opening aphorism in *De Augmentis* was, 'Certainty is so essential to law, that law cannot even be just without it.'⁸⁵ Bentham emphatically agreed, but not because he read it in Bacon. As we have seen, he insisted upon certainty in the law because he had so much first-hand experience in the courts of the evils of uncertainty.

Bacon's suggestions for law reform reflected his dualist metaphysics. He had no intention of undermining any of the courts. Chancery, common, and statute law all had their place. Nor did he demand that the common law be written law. He proposed chronological case-books of common law, supplemented by a legal dictionary, an organized summary of the whole law, and above all by a book of maxims like his own *Maxims of the Law*.⁸⁶ Bacon set great store by these general principles. In 1597 he drew up a list of three hundred. These were middle-level Laws of Nature, not 'philosophia prima' but subordinate general principles underlying all kinds of substantive law, known both by historical study and revelation. A well-made maxim was his instrument of certainty, for it could be used to make accurate predictions.

Bentham's search for certainty in the law was both more thorough-going and earth-bound. He hoped that ultimately all new law might be unified statute law and that all old law might be written down and codified by subject. He too elaborated a set of subordinate axioms, in some ways analogous to Bacon's maxims. They followed, however, from the secular greatest happiness principle, and were simply hypothetical guides for the good legislator.

Bacon and Bentham shared a rare sensitivity to the ambiguities of language and the urgent need for a dictionary if morals and politics are ever to become a science. Bacon considered the Idols of the Market:

the most troublesome of all, those namely which have entwined themselves round the understanding, from the associations of words

and names. For men imagine that their reason governs words, whilst, in fact, words react upon the understanding; and this had rendered philosophy and the sciences sophistical and inactive.⁸⁷

He thought that most philosophical disputes were wars of words that could be routed by fixed definitions based on 'particular instances'.⁸⁸ To Bentham these 'instances' must ultimately be related to pleasures and pains.

They were both determined pragmatists with little sympathy for dilettantes. They agreed that science and art, thought and action, are inseparable.⁸⁹ As they were not unique in emphasizing legal certainty, an inoperative commonplace among lawyers, so they were not alone in stressing the unity of art and science. Similar insights were shared by Leibniz, some of the *philosophes*, and, in our time, John Dewey. Bacon spoke of this unity as 'a conjunction like that of Saturn, the planet of rest and contemplation, and Jupiter, the planet of civil society and action'.⁹⁰

This conjunction of art and science was another one of Bentham's primary principles, one that he discovered early and repeated tirelessly until he died. Like his Encyclopedical Tree it was a general methodological insight, used to interpret or relate all experience and not morals and politics alone. To Bentham all human enterprises are interconnected; all are branches of the same tree of happiness. There are no dualisms in nature; they are verbal conventions. Thought and action, art and science, are different ways of looking at the same thing. By 1776 he had arrived at a life-long conviction.

The same object which is called *an art*, viewed in another light is called *a science*. When we consider the mind as passive with respect to a set of ideas, we speak of them as constituting a science: when active, an art. The mind is conceived to be passive with respect to a set of ideas when they are lodged in the memory, and make their appearance without effort and without fruit.⁹¹

Impatient with over-refinements, he continued:

Whether this will be found to be a satisfactory account of the distinction between these terms, I know not: at the worst there is not much paper wasted. There are those who would have made a great book upon it. The distinction is of so little importance in practise, that whether it be accurately comprehended or no, is no great matter.⁹²

How are art and science joined in practice? By discovery and invention. For Bacon and Bentham there was no more significant human activity than creative invention.* Both were themselves inexhaustible inventors, experimenters, 'projectors'. In his *New Atlantis* Bacon prophesied new sciences, academies, observatories, air-balloons, submarines, drugs and methods of food preservation. Bentham, for his part, drew up plans for criminal and pauper Panopticons, a law school to be run by him in his own house, improved harpsichords and multiple music printing, a Junctionana Proposal for an Atlantic-Pacific canal to be cut through Nicaragua, 'conversation tubes' to be laid like water-pipes between buildings, and a scientific expedition to Botany Bay. As Bacon descended from his carriage to stuff a fowl with snow, Bentham also experimented with the effects of cold. On and off from 1794 to 1809 he drafted plans for a Frigidarium, an igloo-shaped ice-house for storing perishables in his garden.

As always, Bentham's purpose was pragmatic. Before refrigeration, food prices fluctuated wildly. In Bentham's England, peaches or peas cost a shilling a pound in season and a guinea out of it. Herrings soared from two to fifteen shillings per hundredweight, and mackerel from six shillings to five pounds. Bentham wanted to make it possible to buy food all year round at a low and relatively stable price. His Frigidarium experiments were one more example of his never-ending effort to give security to men in an uncertain world.

He made minute lists of foods for his ice-house.

Preservandum: bullocks hearts, calves hearts and liver, rabbits and chickens, sprats and smelts, oysters, goose berries, currants, cherries, pine apples, straw berries, milk, green peas in and out of the shell.⁹³

Bacon had the same penchant for minutiae and exhaustive classification. His Idols, or classes of error in ways of thinking, were broken down into twenty-seven subdivisions. This was more than a personal quirk; it was a vital part of their methodology. Bentham's principle of exhaustive bifurcation was an analytic resolution which he considered the most effective way of surveying any subject to its remotest corners.

Their joint contempt for Aristotelianism was part of their

* See Chapter 6 below for a further discussion of the role of invention in the science of legislation.

general contempt for 'the wisdom of our ancestors'. Bentham borrowed this phrase from Bacon to describe one of the major fallacies in his *Book of Fallacies*, and his fallacies were, in turn, analogous to Bacon's Idols. Bentham agreed entirely with Bacon that:

The opinion which men cherish of antiquity is altogether idle. . . . For the old age and increasing years of the world should in reality be considered as antiquity, and this is rather the character of our own times than of the less advanced age of the world in those of the ancients.⁹⁴

They both mistrusted oaths and Bacon quoted Lysander, 'That children are to be deceived with comfits, and men with oaths.'

The similarities between them stretch on and on. In the thousands of pages of *Preparatory Principles* that Bentham wrote in the 1770s he imitated French epigrammatic style. The results were Baconian as well, for Bentham developed the same talent for aphorisms and concrete imagery. And although his style suffered many changes, he never lost it. As late as 1831 he wrote, to explain the processes of synthesis and analysis:

Proceeding in the way of synthesis, you do [by them] . . . as you do by a number of gooseberries, when you make them into a pie; or of grains of millet, when you make them into a pudding. Proceeding . . . in the way of analysis, you do as you do by a cucumber, when you cut it into slips to be eaten, when it has been peppered, salted, and vinegared.⁹⁵

There are many analogies in Bentham to Bacon's Idols of the Tribe, the Cave, the Market-place, and the Theatre. Bentham often spoke of the interest of the Purse, the Sceptre, the Trumpet, the Pillow, the Gall-bladder, the Spying Glass, and the heart.⁹⁶ In this way he tried to make the abstractions love of wealth, power, reputation, labour, hatred, curiosity and sympathy vividly concrete.

Again with a popular audience in mind, Bentham reduced his insights to rules and principles similar to Bacon's maxims and aphorisms. He used them deliberately as instruments of persuasion, as conceptual shorthand to make an elaborate idea easily memorable. He also used them as mnemonic devices, as

advertising copywriters do slogans, and repeated them over and over again, hoping to make them unforgettable. In 1818 he listed the 'Use of the Rules of Deontology':

Being at times free from excitation, stored up in the mind, afterwards under excitation, viz. – by imprudence or maleficence – they may become useful, by checking the bad passion at its commencement. By being put into verse, their usefulness might be much increased.⁹⁷

He wrote such 'verses' himself, possibly inspired by one of the Oxford logic texts, Aldrich's *Artis Logicae Compendium*, which was entirely written in verse.⁹⁸ Such seemingly naïve lines as these were meant to serve a pragmatic purpose:

Intense, long, sure, not distant, fruitful, pure,
Such marks in pleasures and in pains endure.
Such pleasures seek if private be thy end;
If it be *public*, wide let them extend.
Such *pains* avoid, whichever be thy view;
If pains *must* come, let them extend to few.⁹⁹

Bentham well knew how awkward and unpoetic they were but he hoped that their value as an aid to memory would compensate.

Although he abandoned his early epigrammatic style around 1780, he took it up again in a more cautious refined way when he wrote his *Chrestomathia* between 1814 and 1816. He re-read D'Alembert and Bacon and once again he saw how effective Bacon's aphorisms were. From that time on, brevity became the soul of Bentham.

It was at least one measure of the value he attached to his doctrines. If he considered them important, he was sure to reduce them to concise memorable principles, certain that 'complication is the nursery of fraud'.¹⁰⁰ In June 1815 Bentham sent Prince Adam Czartoriski a copy of *Chrestomathia* with a letter explaining how he wanted:

to take a fresh peep into every nook and cranny of the whole field of art and science: . . . My endeavour has been, to reduce the whole sketch into as narrow a compass as possible: and the narrower the compass, the greater the quantity of labour which it has cost me. Locke's Essay (so he tells us himself in his preface) is too long – Why? 'Because,' says he, 'I had not time to make it shorter.'¹⁰¹

There are, then, no more brief and more important documents in the whole unmanageable mass of Bentham's writings than his statements of 'Logical Arrangements, or Instruments of Invention and Discovery'.* In them he tried to concentrate the bulky wisdom of Utilitarianism as short series of Baconian aphorisms.

What kind of science is moral and political science? Bacon and Bentham gave the same answer. It is like medicine. Bentham drew the analogy dozens of times. It is eminently empirical and practical, an art-and-science. Trial and error unavoidably play a large part in it.¹⁰²

If Bentham's great ambition was the same as Bacon's, a *Novum Organum*, a new method by which man might join thought and action surely and fruitfully to increase happiness, they both began in the same way. If Bacon always felt that the first part of his new scheme must be a *para destruens*, a destructive criticism of other methods, so did Bentham. Bacon might have spoken for them both:

I have taken all knowledge to be my province; and if I could purge it of two sorts of rovers . . . I hope I should bring in industrious observations, grounded conclusions and profitable inventions and discoveries – the best state of that province.¹⁰³

Bentham's 'two sorts of rovers' were ascetics and *ipse dixitists*.† He summarized his approach in the motto: no criticism without construction. Before his own proposals could take root, he had to clear the ground, but he never destroyed for its own sake. He always offered a better alternative.

Nor did Bacon and Bentham merely classify their potential opponents. They listed all the specific kinds of errors they could expect to face. Many of Bentham's *Preparatory Principles* are such compilations, and his *Book of Fallacies*, written thirty and more years later, is his most mature and comprehensive account. In a way he was carrying out Bacon's 'procedure by negative instances'.

The next step in their *Novum Organum* was the collection of facts. Bacon called it a 'Natural History' and thought the success

* See Appendix C; III, 285–95; and VIII, 276.

† Or those who adhered to the principle of asceticism or the principle of sympathy and antipathy. See *The Principles of Morals*, Chapter II.

of his inductive method depended on it. 'Either store of instances must be procured, or the business must be given up.'¹⁰⁴ Bentham agreed, and one explanation for his life-long concern with the law and his abandonment of many new interests like foreign policy and economics was that facts were available in the first case but not in the others.

It has become a textbook cliché that Bentham's heritage was Helvétian and Beccarian. So it was. But no one influenced him more strongly than Bacon. We ignore this crucial fact, but Bentham's contemporaries did not. His close friend, Dr Samuel Parr,* understood the parallels. 'Nothing,' he used to say, 'since the appearance of Bacon's "Novum Organum" is to be compared with Bentham's "Morals and Legislation".'¹⁰⁵

John Stuart Mill, for all his myopia about some of Bentham's work, saw that he was trying to adapt Bacon's method of dealing with the phenomena of physics to the moral sciences. Bentham, he said:

introduced into morals and politics those habits of thought and modes of investigation which are essential to the idea of a science; and the absence of which made those departments of inquiry, such as physics had been before Bacon, a field of interminable discussion, leading to no result. It was not his opinions, in short, but his method, that contributed the novelty and value of what he did. . . . [It] may be shortly described as the method of detail; of treating wholes by separating them into parts . . . and breaking every question into pieces before attempting to solve it.¹⁰⁶

Conclusion: Expositor and Censor.

By 1769 Bentham's heritage had become an enormous, eclectic, and tense mixture. He had been taught to revere a social system or fabric that he gradually came to despise. Its threads of gloomy Johnsonian morality, classical poetry, Aristotelian logic, Lockean politics, and Blackstonian law seemed rotten to him, and no longer useful for weaving new social patterns. In 1768 he discovered the principle of utility, and in 1769 dozens of subsidiary threads in Helvétius, Beccaria, D'Alembert, Montesquieu, Hume, in select parts of Locke and Blackstone, and above all in Bacon. To these he added what he had learned about recent scientific method from his own

* 1747-1825, curate of Hatton, celebrated for his Greek and Latin inscriptions and his 10,000-volume library, known as the Whig Dr Johnson.

chemical experiments and his readings in Linnaeus and Lavoisier.

At last he no longer needed to listen, helpless and unhappy, to the Expositor; he could become a Censor. In the preface to *A Fragment on Government* he said:

To the province of *Expositor* it belongs to explain . . . what . . . the law *is*: to that of the *Censor*, to observe . . . what he thinks it *ought to be*. The former, therefore, is principally occupied in stating . . . *facts*: the latter, in discussing *reasons*.¹⁰⁷

But the Censor has several jobs. It is not enough for him merely to condemn and explain why. He must at the same time offer better alternatives and reasons for them. These Bentham could now give. He began to create a new art-and-science of morals and legislation.

No sooner had he fairly started than he realized that his enterprise was unique. It depended absolutely on detailed accurate facts and none of his predecessors had them. In many cases he had to hunt for them himself; in others, he could find none, and had to drop his investigations. It was natural that the more Bentham reflected on the nature of scientific method, the less he would depend on the theoretical speculations of others and the more he would rely on direct empirical evidence. And so in fact it happened. Because many Expositors were eulogizers who described their fantasies rather than facts, Bentham had to become his own Expositor as well as Censor.

The further he progressed, the closer his principles depended on facts, the more his understanding of what *ought to be* was based on his knowledge of what *is*. On the other hand, he did not assemble facts by simple enumeration. His guide and standard of selection was always the principle of utility. How did he combine the roles of Expositor and Censor? It was just here that his heritage failed him. He had to find the answer for himself by trial and error. The *philosophes* had only limited and outdated information about English affairs. Nor, for all his reverence for Bacon, could Bentham accept his dualist epistemology.

It was inevitable that as his horizons widened, his ideas should change and that the changes should be set by his social context. Gradually as he paid growing attention to the anarchic and amateur political scene around him, he became a subtle

psychologist ever more aware of the way men cloak naked motives with luxurious eulogisms. He spoke of himself as a mechanic forging new machine tools. First he borrowed the parts wherever he could. Then he made the tools, that is, a new vocabulary of politics and a logic of the will. Finally he tried to teach others how to use them, first by breaking up the entrenched mass of social and political habit and then by persuading men to adopt new Utilitarian patterns of behaviour. But what was the technique of persuasion? This social problem was crucial and insoluble. Though Bentham did not in his lifetime succeed in changing the opinions of those he set out to convert, their attitudes and prejudices determined the shape of his own thought. Their intransigence helps to account for his *memoriter* verses and interminable repetitions.

The pattern of Bentham's intellectual heritage became ever more concrete and less abstract, ever more generalizations from broadening experience and less doctrines repeated from books. Certainly he continued to read anything that seemed relevant or informative, but he referred more to Englishmen than to Frenchmen and more to descriptive accounts of what is than to theoretical accounts of what ought to be.

Although Bentham wanted to create a new art-and-science of morals and legislation, he never claimed that the principle of utility was a scientific 'law'. It was a highly concentrated expression of low and high order, descriptive and normative, statements. It combined his opinion that the proper end of government must be the greatest happiness of the greatest number with the 'fact' that men always seek to maximize pleasure and minimize pain.* Bacon was in his way a good Utilitarian and might have seconded Bentham's value judgment about the end of government, but he would have found a further sanction for it. In Bacon's epistemology, reason dictated the ends of natural science but religion dictated ethical ends. Divine revelation was the ultimate source of knowledge about the ways of men. Bentham needed no sanctions and offered none, beyond the psychological 'facts'.

But if Bentham's heritage failed him, so did contemporary science. Because the principle of utility was not a 'law', there was a point at which the analogies between physics and the natural science and Bentham's new art-and-science broke down. The

* For the ambiguities of the principle of utility, see Chapter 5 below.

value of the greatest happiness principle could not be measured by its utility in prediction: it had a different logical status from scientific laws.

Nevertheless, though Bentham's system began and ended with an ultimate value judgment, in almost every other respect his new art-and-science conformed to the methods of physics and the natural sciences. What were these methods? What were the conditions of knowing and doing, of a new art-and-science of morals and legislation?

After the principle of utility itself, the first requirement of Bentham's logic of the will was a new dictionary. His second was a grammar, an analysis of the formal structure of possible statements composed of his new definitions. His third was the mass collection of evidence about the way people behave, as individuals and in groups. This supported his fourth requirement, a list of subordinate principles and rules analogous to middle-level laws in other sciences, which served as a bridge between the ambiguities of the principle of utility. Given the principle of utility, then, he moved step by step toward his grand ambition. First he made a dictionary and then a new grammar. What was his new mode of definition and what was his new grammar?

CHAPTER 3

1 B. 169, p. 141, probably 1781.

2 *An Enquiry Concerning the Principles of Morals*, Section V.

3 B. 27, p. 100.

4 *Ibid.*

5 Keynes Collection #70, King's College, Cambridge, 12 July 1768.

6 X, 54.

7 *Ibid.*

8 B. 169, p. 104, 1778. Letter to an early friend, John Forster, then minister to the English colony in St Petersburg.

9 B. 27, folio 2, ca. 1776.

10 B. 169, p. 104.

11 B. 27, folio 1.

12 Whose *Dei Delitti e delle Pene* was first published in 1764.

- 13 B. 27, p. 34.
- 14 B. 169, p. 13, November 1776. See also Baumgardt, p. 551.
- 15 *Ibid.*
- 16 A. M. 33539, p. 83.
- 17 B. 27, p. 121, Prefat, Bern Prize Code, 1779.
- 18 VIII, 119-120. 19 VIII, 120.
- 20 B. 169, p. 102, *ca.* 1776.
- 21 Arthur Wilson, *Diderot: The Testing Years, 1713-1759* (New York: Oxford University Press, 1957), pp. 125, 132.
- 22 VIII, pp. 73ff. 23 X, 171.
- 24 From the title-page of *Chrestomathia: Being a collection of papers explanatory of the design of an institution, etc.*, VIII, 1.
- 25 B. 169, p. 50, *ca.* 1778.
- 26 See Cassirer, *op. cit.*, for a fuller discussion.
- 27 Arthur Wilson, *op. cit.*, p. 194.
- 28 For a further discussion of Delolme's views, see Harold Laski, *Political Thought in England: Locke to Bentham* (London: Home University Library, 1950), pp. 122ff.
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- 30 B. 27, p. 6, *ca.* 1775.
- 31 A. M. 33538, p. 114, 5 April.
- 32 B. 152b, p. 335.
- 33 A. M. 33553, pp. 57-9, 2 December 1820.
- 34 Dicey, *op. cit.*, p. 128. See Introduction.
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- 36 Hippolyte Taine, *History of English Literature* (London: Chatto & Windus, 1871), I, 472.
- 37 *Aubrey's Brief Lives*, ed. Oliver Lawson Dick (Ann Arbor: The University of Michigan Press, 1957), xlv.
- 38 This and the following quotation from Hobbes are taken from a superb article by Dorothea Krook, 'Thomas Hobbes's Doctrine of Meaning and Truth', *Philosophy* (January 1956), pp. 3-22.
- 39 William L. Whyte, *The Organization Man* (New York: Simon and Schuster, 1956), p. 25.
- 40 X, 73, 1774-5.
- 41 *Selected Writings, op. cit.*, p. 241.
- 42 Arthur Wilson, *op. cit.*, pp. 187-9.
- 43 *Ibid.*, pp. 309-12, and Cassirer, *op. cit.*, pp. 25-6.
- 44 Arthur Wilson, *op. cit.*, p. 310.

45 Jeremy Bentham, *Comment on the Commentaries*, ed. C. W. Everett (Oxford, 1928), Introduction.

46 X, 70, 1773-4. 47 X, 142. 48 IV, 283. 49 I, 268. 50 VI, 237. 51 VIII, 108. 52 VIII, 128. 53 VI, 240, note.

54 See pp. 235 *ff.* below.

55 See Blackstone, *op. cit.*, I, Introduction, pp. 1 *ff.*

56 B. 97, p. 99, *ca.* 1780.

57 I, 14.

58 I, 30, from 'Introduction to the Study of the Works of Jeremy Bentham', by John Hill Burton (1809-81, Scottish barrister, historian, and biographer of Hume), pp. 3-82.

59 A. M. 33550, p. 32, 1819.

60 A. M. 33530, p. 35.

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62 *Selected Essays* (Cambridge: Cambridge University Press, 1936), p. 129.

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64 Jeremy Bentham, *The Limits of Jurisprudence Defined*, ed. C. M. Everett (New York: Columbia University Press, 1945), pp. 298-9. It should be remembered that this book was originally the continuation of Chapter XVII of *The Principles*.

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67 Wraxall, *Historical Memoirs, op. cit.*, p. 426.

68 B. 125.

69 B. 96, p. 64, *ca.* 1773.

70 II, 393, *The Book of Fallacies*.

71 VIII, 99. 72 VIII, 437. 73 V, 558.

74 *Advancement of Learning and Novum Organum* (New York: Willey Book Co., 1944), p. 282.

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80 VIII, 120.

81 *Ibid.*

- 82 A. M. 33551, 'Aphorisms, Logical Arrangements', 1827-30.
- 83 VIII, 339-57.
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- 88 *Ibid.*
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- 91 B. 69, p. 197, *Preparatory Principles*. For one of his late statements, see VIII, 239, 'Essay on Logic', written at various times down to 1831.
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- 93 B. 106, pp. 17-75.
- 94 *Advancement*, *op. cit.*, pp. 340-1.
- 95 XI, 73.
- 96 See VI, 11, note, and *Table of the Springs of Action*, I, pp. 195-205.
- 97 X, 510-11.
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- 99 III, 287, *ca.* 1814.
- 100 X, 531. 101 IV, 530.
- 102 See Chapter 6 below for Bentham's views and Kocher, *op. cit.*, p. 33, for Bacon's.
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- 105 John Neal, *Wandering Recollections of a Somewhat Busy Life* (Boston: Roberts Brothers, 1869), p. 303.
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Part II

Knowing:

1768-1782

Language and the Logic of the Will

'Essentially a philosophy is a system of definitions'

BERTRAND RUSSELL

'Philosophy is a battle against the bewitchment of our intelligence by means of language.'

LUDWIG WITTGENSTEIN

The Metaphysician and Lexicographer.

Because uncertainty was one of the few certainties of the cumbrous, unwritten, unknown, expensive, and slow English law in the eighteenth century; because Bentham saw the mass suffering it produced and at the same time recognized that law is the supreme regulator of human life, his overriding and undying drive was a search for legal certainty. Because law is made of language, nothing can be done to improve it until its vocabulary is first fixed. 'Till men know what it is they say,' he asked, 'how should they know what they do?'¹ Some fifty years after he first appreciated the primary importance of a dictionary of moral and political terms, he continued to insist that:

Proportioned to the uncertainty . . . of the words employed upon legal subjects, will be the uncertainty of possession and expectation in regard to property . . . and also the deficiency of political *security* against evil proportioned, therefore, to the fixity given to . . . words, will be the degree of security for good. . . . Until, therefore, the nomenclature and language of law shall be improved, the great end of good government cannot be fully attained.²

He announced, 'Postulate: That all new words and phrases necessary to the substitution of truth to error – of clearness to obscurity or ambiguity – conciseness to verbosity – be coined, uttered, and received.'³ Before he was a Statesman, therefore, Bentham was a Metaphysician. To Michelet metaphysics was

the 'art of bewildering oneself methodically'; to Bentham it was linguistic analysis.

Metaphysics, modern Metaphysics, genuine Metaphysics, of which Locke was in a manner the inventor, is that science which teacheth the signification of words, and the ideas which they signify: which it does . . . [by] shewing how all the ideas we have that are complex, arise from, and are made up of simple ones. Thus it is that . . . every science has its metaphysics: there is no science that has not a set of terms that are more particularly its own, standing for ideas that are more particularly its own: . . . Legislation as much as any has its metaphysics; and in the improvement of this as of those, experience and metaphysics must go hand in hand.⁴

It is a neutral discipline.

To be skilled in Metaphysics is neither to hold for Atheism nor for Theism. Metaphysics is neither infidelity nor credulity. It is not to know what belongs to God, or what belongs to Angels: nor to profess to know that there are neither God nor Angels. It is not to hold the soul to be mortal, nor to hold it to be immortal. But it is this: in talking whether of God or of Angels or of the immortality of the Soul or of its mortality . . . to know and to be able to make others know what it is we mean.⁵

The man who combines experience and metaphysics was the Statesman, and Bentham spent his whole life trying to find him. He never did. Until 1782, however, he was eager and hopeful. He was sure that his analyses must be welcomed and adopted by some influential man of affairs like Lord Mansfield. He himself could remain in the background, devoting himself entirely to metaphysics, theory, science, knowing, while his powerful experienced converts applied themselves to Utilitarian practice, art, and doing. Slowly he became his own Statesman; until then he was a Metaphysician.

The role was hardly new. When Bentham said, 'New words are necessary to express new distinctions: and as distinctions multiply, science grows,'⁶ he was expressing a platitude. When he asked, 'Shall words be coined or shall . . . the growth of science be at a stand?'⁷ his question was rhetorical. The *philosophes* agreed with him that language is not only an instrument of communication but of creative thought as well.

They also agreed that given a good dictionary a science of morals and legislation was possible. Indeed, Helvétius pointed the way for Bentham by showing him the relationship between pleasures and pains and happiness. However, Bentham alone did more than talk and hint: he actually made a new dictionary. Nor was this the only novelty in his absorption with the language of legislation.

He emphasized its peculiar urgency. For legislation was not an abstract science like chemistry or physics, made initially by and for a small group of disinterested professionals. It was rather a practical science that affected everybody. The vocabulary of other sciences was neutral; the language of morals and politics was charged with emotive meaning. Here as nowhere else the misuse of words could be disastrous. 'That language should have no influence on *conduct*,' Bentham insisted, 'is not possible. For in what instance is not conduct a slave to language?'⁸ Over and over again he wrote variations on the same theme.

Might not the catastrophe of Charles I have been prevented by the mere transposition of words? Has not the British Empire in Indostan been shaken to its centre for want of a definition of the word 'service?' Are not wars of religion all waged upon this ground?⁹

In a play or a novel, an improper word is but a word: and the impropriety . . . is attended with no consequences. In a body of law – especially of laws given as constitutional and fundamental ones – an improper word may be a national calamity: – and civil war may be the consequence of it. Out of one foolish word may start a thousand daggers.¹⁰

The evil effects of bad language were not limited to sporadic catastrophes. Through the common law they spread into every corner of English life and undermined the national morality.

Grammar and legislation must work in concert. A good grammarian is a powerful friend to ignorance, and a powerful enemy to corruption: the same flaws in language which serve as pitfalls to ignorance are lurking holes to corruption. The customary law, that trackless wilderness, that darkest of all chaos, is the great harbour of corruption: the harpies of chicane burrow in it like rabbits in a warren.¹¹

Here are the seeds of Bentham's ethics, and once again his thought arose from his dissatisfaction with the law. If immorality

is the result of bad law, the Metaphysician and the Statesman must work together to create better laws and a better moral code. The legislator is ultimately responsible for a dictionary of morals as well as politics.

Bentham also emphasized the peculiar difficulty of such a dictionary. For legislation is 'the master science – the science upon which the fate of every other science . . . depends.'¹² The professional scientist is a specialist, but the legislator must take a commanding view of all human activities. An Encyclopedical Tree would enable him to make a synoptic survey of the whole area of his responsibilities. With it he could see at a glance the interrelationships of all subjects. But even with this device to aid him, the good legislator had to be extraordinarily disinterested, diligent, imaginative – and an untiring fighter. For he must expect fierce chronic opposition. In the special sciences professionals were committed to progress and welcomed new words for new distinctions. In the law, however, professionals were committed to the *status quo* and scorned the unfamiliar. And so did the general public. Bentham was prepared for struggle.

The seat and station of improvement [in law] . . . is in language, but . . . tho' itself the instrument of all other improvement [it] . . . is in a more particular degree averse to [it] [In] Chemistry . . . amendments of every kind . . . are daily suffered, and received without murmur or repugnance. Not so in the case of morals: this is considered as common land, and every improvement is resisted as an encroachment.¹³

Over and over again Bentham apologized for the unavoidable dryness of his new dictionary. In an early preface, 'Apology – Dryness', he wrote wistfully, 'Nobody expects to find any entertainment, not even instruction by reading in the order of the words in a dictionary, & yet a Dictionary is a very useful book.'¹⁴

How then did Bentham re-define the vocabulary of morals and politics? He began as usual with a critical description of men's habits and offered them a constructive alternative. D'Alembert had taught him the distinction between real and fictitious entities, and Bentham saw that all discourse is fictional.* Some names are the names of real entities but the moment we assert

* See Introduction above, pp. 1, 23–4.

something about them we must inevitably use fictions. Though we cannot talk about the world except by fixing it in time and space, 'The truth is, that, as far as we are able to judge, all portions of matter, great and small together, are at all times in motion.'¹⁵ These ultimate fictions are part of the structure of language: we put apples *on* the table; we have ideas *in* our minds; we came yesterday, are here today, and shall leave tomorrow. These are logician's fictions, inevitable, universal, and neutral.

All propositions imply existence: this was one of Bentham's basic postulates. But names do not, and this is the focus of his attack on fictions. The deplorable human habit of substantializing names was no secret to poets, priests, and politicians, who encouraged it for their own purposes. 'Fiction, in the logical sense, has been the coin of necessity; – in that of poets of amusement – in that of the priest and the lawyer of mischievous immorality.'¹⁶ But only the fictions of priests and lawyers were dangerous. Their verbal absurdities led to public catastrophe. To replace their empty pomposities Bentham made his dictionary. His object was to minimize the difference between real and fictitious entities.

His method was 'paraphrasis', based on Locke's epistemology. To define a word is to resolve the ideas it represents into simpler ones based on sense impressions, that is, on pleasures and pains. Bentham explained in *A Fragment on Government*:

A word may be said to be expounded by *paraphrasis*, when not that *word* alone is translated into other *words*, but some whole *sentence*, of which it forms a part, is translated into another *sentence*; the words of which latter are expressive of such ideas as are *simple*, or are more immediately resolvable into simple ones than those of the former. . . . This, in short, is the only method in which any abstract terms can, at the long run, be expounded to any instructive purpose; that is, in terms calculated to raise images either of *substances* perceived, or of emotions.¹⁷

The usual definition *per genus et differentiam* was inadequate for the greatest abstractions, for these have no superior genus. In these cases, Bentham said, 'it must either stop short, or turn back . . . upon itself, in a *circulate* or a *repetend*'.¹⁸

Paraphrasis, then, is the substitution of a sentence containing an abstract word by a simpler equivalent proposition (that is, subject, predicate, and copula) exhibiting material images.

Bentham offered his new method in an ambivalent mood of diffidence and pride. There is no doubt that he considered paraphrasis fundamental to his entire system, yet he feared that no one would be interested in his 'metaphysical speculations'. Nor were they. He learned fast. In *A Fragment* he hid his description of paraphrasis in a footnote, prefaced by a warning that the road ahead was rocky. In *The Principles of Morals*, when he used abstractions like power and right, he apologized for avoiding full definitions and merely referred his readers to the footnote in *A Fragment*. In its sequel, *The Limits of Jurisprudence Defined*, he described paraphrasis again. But the book was so abstruse and those who read the manuscript were so hostile that he never published it.

Nor did he write any more 'metaphysics' until around 1811, and then only for his private satisfaction. Characteristically he began where he had left his analyses in 1782, now distinguishing and naming parts of the process which had earlier gone unnamed. That part which expanded a fiction into a full proposition he called 'phraseoplerosis', that is, filling-up the phrase; 'archetypation' was the suggestion of a concrete image.¹⁹

Take the fundamental legal fiction, obligation, upon which so many other fictions depend. It must be turned into a proposition such as: an obligation is 'incumbent upon', 'attaches to', or 'weighs upon' a man. These phrases presumably suggest images of pressures or restrictions, that is, pains. To complete the exposition, a second equivalent proposition about pleasures and pains is joined to the first.

A legal obligation to do [an] . . . act . . . is said to attach upon a man . . . when in the event of his performing the act at the time and place in question he will not suffer any pain, but in the event of his not performing it he will suffer a certain pain.²⁰

If all meaningful language refers to pleasures and pains, then there are levels of fictions, ranging from the lowest order immediately related to concrete images through an ascending scale of increasing abstraction.

Reckoning from the real entity to which it bears relation, a fictitious entity may be styled a fictitious entity of the first remove, a fictitious entity of the second remove, and so on.²¹

The Utilitarian Metaphysician must make this hierarchy of fictions explicit. He could not eradicate the pomposities of the priest and the lawyer but he could and must give their fictions meaning by relating them to the feelings of men. What is the meaning of those favourite abstractions of political sound and fury – defamation, sedition, insurrection, treason?

A public functionary is a man. . . . By sedition and so forth, if any real mischief is done by it, it is to the person or the property of some man that the mischief is done. . . . In a country [governed by] . . . the greatest happiness of the greatest number, let a man seditiously . . . see what he will get by it. He will be laughed at.²²

Though Bentham's first requirement was a dictionary, his definitions were contextual and depended upon the simultaneous development of the other parts of his system. As their content was given by the greatest happiness principle, so their form was the grammar of the logic of the will. Definition, he thought, is no primitive art but a highly sophisticated analytic operation. In 1826 he amused himself with a 'Conjectural History of Language', a curious fragment that foreshadowed modern philologists' comparative studies of primitive languages as well as their conclusion that the elemental unit of communication is not a word but a full statement.²³

There are actual histories and conjectural or inferential histories. The history of language must remain largely conjectural because actual history presupposes language, and the origins of language antedate our ability to talk and write about it.

In the delineation of the conjectural branch, analogy . . . will afford great assistance. On one or other part of the earth's surface may be seen at present the human species at all the different stages of civilization. In New South Wales may be seen the immediate progeny of Adam and Eve. By their language no small light might be thrown upon the origin of language. By it would be exhibited the . . . original stock – the scantiest stock possible of ideas and correspondent words – of names individual and common – of nouns substantive, nouns adjective, verbs with their several adjuncts designative of number, sex, time, place, present, past, and future, actual and hypothetical. . . .

Given, as mathematicians phrase it, the modes and habits of living, given are the ideas: given the ideas, given again is the language. . . .

Thus much we know: namely, that as of all other inventions, so of this; necessity must have been the mother. In the case of each tribe the objects of which the use and thence the possession is most necessary . . . to subsistence, to enjoyment, to exemption from pain – the necessity must have been earliest and most urgently felt. Hence these must have been the objects to which the denominations must have been earliest attached.

Without an entire sentence of no necessity, of no want, can any intimation be conveyed. From this view of the matter it should seem that sentences or the equivalent preceded words, as entire words preceded syllables and syllables, letters. . . . If so, analysis . . . will have been the mother of language.²⁴

It was from conjectures of this kind about the origins of language that Bentham developed his ontology. All abstractions are variously elaborate sophistications of primitive propositions about sense data. The most profound problems of conventional 'metaphysics' will disappear when philosophers define by paraphrasis and realize that they are victims of misplaced analogy. They mistakenly apply general spatial and temporal connectives like 'in', 'on', and 'to', originally formed to communicate sense impressions, to purely fictitious entities.

As Bentham considered sentences genetically prior to the words they contain, so he defined by paraphrasis, by treating the *definiendum* as the subject of a sentence and offering a second equivalent. His definitions are fully significant only in their larger framework as constituent elements of certain kinds of sentences. How do we speak of offences, services, rights, duties, liberty, and justice? In what kinds of sentences do we use the vocabulary of morals and politics? For his purposes he distinguished between assertive, volitional, and interrogative sentences. Aristotelian logic was limited to assertions; the Benthamic logic of the will was an analysis of the structure of commands (or laws or expressions of will) and questions.

The Structure of Commands.

Because moral and political abstractions were elements of volitional sentences or laws, Bentham made no separate dictionary. He defined by codifying, and the index to his codes was the key to his dictionary. In 1821 he described his method:

In my Code, every word . . . [not] settled by universal usage, receives a definition: . . . In the Code is thus contained a Law Dictionary: that dictionary a complete one, and having the same authority as the text.²⁵

To understand Bentham's definitions, therefore, they must be seen as parts of his logic of the will. What was this new logic? It was, in effect, a complete Utilitarian code of law – a Pannomion. It was also his great contribution to the history of ideas. The content of his thought was familiar; that was one reason why he adopted it. But the form and method were uniquely his. He did what no one else has done.

During the 1770s Bentham was content with simple definitions. He wrote thousands of practice pages: *Preparatory Principles*, *Critical Elements of Jurisprudence*, *Bern Prize Penal Code*. He tried to reduce all these miscellaneous sheets to one definitive work. But instead of shrinking, his piles of manuscript once again multiplied. Instead of a complete science of morals and legislation, he had seventeen chapters of introductory remarks and analyses of offences. These he printed in 1780 as *The Principles of Morals*. But he refused to publish until 1789. By that time only a few copies were left; most of the ill-stored edition had been ruined by water and rats. In a new introduction Bentham explained his reluctance. He was dissatisfied because the book was incomplete, and it was incomplete because he had been bewildered by new problems that arose as he wrote. He had 'found himself unexpectedly entangled in an unsuspected corner of the metaphysical maze'.²⁶

Discrete definitions were not enough. He needed a formal structure for his thought and turned to logic to guide him out of his maze. 'O Logic!' he cried, 'born gate keeper to the Temple of science . . . come to the aid of thy great master, Legislation!'²⁷

During 1782 Bentham struggled with the questions he had asked in the last paragraph of the unfinished Chapter XVII of *The Principles*. 'What is a penal code of laws? What a civil code? . . . To answer these questions . . . it will be necessary to ascertain what a law is.'²⁸ He wrote hundreds of pages in answer, *The Limits of Jurisprudence Defined*. They are unpolished but fundamental, and offer Bentham's first insights into the logic of the will:

The subject we are now entering upon belongs to a particular branch of logic, untouched by Aristotle. The main and ultimate business of the school-logic of which that philosopher was the father, is to exhibit the several forms of *argumentation*: the business of the branch now before us is to exhibit the several forms of *imperation*: or . . . of sentences expressive of volition: a leaf which seems to be yet wanting in the book of science. . . . All language whatsoever, every sentence whatsoever, inasmuch as it *expresses* something must *assert* something: something expressive of the state and condition, real or pretended, of the mind of him whose language it is: that is either of his understanding or his will. In the first case the sentence expressive of it has been styled exclusively a *sentence of assertion*: in the other case, a *sentence of volition*: of which latter, a *sentence of interrogation* is a particular species. 'The robber is killed'; – 'Kill the robber'; – 'Is the robber killed?' – This is as much as to say, 'I *understand* or believe that the robber is killed.' – 'My *will* is that you kill the robber': – 'My *will* is that you tell me whether the robber be killed or no': – Now it is to sentences of the assertive kind that the logic of the schools has confined itself: those which concern volition it has left untouched. The demesnes of the logical branch of science appear then to be more extensive than has commonly been suspected: the language of the will being a new and unexplored province which . . . might be cultivated. . . . It is the branch . . . that is more particularly applicable to the business of government: that subdivision which concerns the forms of imperation at large having a more particular regard to legislation: that which concerns the forms of interrogation, to the less dignified but not less necessary business of collecting verbal information.²⁹

Despite the inadequacies of classical logic Bentham perforce turned to it for analogies: there were no other precedents. In any case his logic was not competitive but supplementary. Moreover, laws usually have several parts, only one of which is a direct expression of will. The remainder is largely expository, either descriptions of precedents or limiting conditions. These parts would of course follow the rules of traditional logic. 'By the light of analogy, the instructions which have been given on the subject of the logic of the understanding, may be found applicable, with more or less fitness, to the logic of the will.'³⁰ One analogy he found useful was the classical distinction between hypothetical and categorical propositions. All laws, he thought, should be categorical. Issued in an 'if . . . then . . .' form, they were needlessly long-winded and therefore obscure.³¹

In his new introduction to *The Principles*, Bentham explained how he escaped from the maze in which he had been trapped.

There is, or rather there ought to be, a *logic* of the *will*, as well as of the understanding. . . .

Of this logic of the will, the science of *law*, considered in respect of its *form*, is the most considerable branch. . . . It is, to the art of legislation, what the science of anatomy is to the art of medicine.³²

Therefore Bentham began to make a complete anatomy of the law, a vast analysis of all its branches. 'Such then were the difficulties: such the preliminaries: – an unexampled work to achieve, and a new science to create: a new branch to add to one of the most abstruse of sciences.'³³

But the difficulties and preliminaries were far greater than even the dedicated tireless Bentham could overcome and he imagined a masterpiece that was never finished. During the last years of his life he worked at a frenzied tempo, afraid he would die before his logic was complete. At times he despaired. In a letter to a Spanish disciple, Bentham wrote in 1820:

Of the instrument by which . . . I have been enabled . . . to do what I have done . . . (I mean a sort of logic) I have, here and there, had occasion to bring to view some parts: in particular, in my work entitled *Chrestomathia*. But, as yet, it exists only in parts: and, though I have considerably more already in manuscript, I shall not live long enough to finish it. And, if I could, how would it be possible to transfuse, into any rising mind, the exact stock of those ideas, which it has taken more than half a century to collect into mine?³⁴

It was not possible. Bentham neither assembled his random fragments nor did he 'transfuse' his logic to a sympathetic disciple. Perhaps he was aware that his chief executor John Bowring was a pious enthusiast rather than a clear-headed analyst, for Bentham left his logical manuscripts to his nephew, George Bentham, an excellent amateur logician.* George, however, was interested only in the most general problems of language, not in the bastard mixture of theory and practice that was the logic of the will. He collected and edited only the fragments on 'universal grammar' and ignored the bulk of them.†

* George Bentham, 1800–1884, son of Samuel Bentham, botanist, President of the Linnaean Society, 1861–74.

† His book, *Outline of a New System of Logic*, was based on Bentham's manuscripts. Published in 1827, it has recently been recognized as an original and

Actually, Bentham was not content to codify all law and so to create a logic of the will. When he returned to problems of logic and language after 1811, he developed an even more grandiose ambition – a comprehensive analysis of all the operations of the human mind, of the understanding as well as the will. He thought that ‘a demand exists for an entirely new system of *Logic*, in which shall be comprehended a *theory of language* considered in the most general point of view.’³⁵ He wanted ‘to trace out, throughout the whole of their extent, the principal relations between the field of *thought* and the field of *language* – comprising, of necessity, the leading principles of the art and science of *universal grammar*.’³⁶ In this vast scheme both Aristotelian logic and the logic of the will would find a proper subordinate place.

It is not surprising therefore that Bentham’s most important work is virtually unknown; it was after all virtually unwritten, uncollected, and unedited. Nor is it possible to give a complete straightforward account of it, for Bentham never wrote one. The most that can be done is to piece together his random insights. Like his own history of language it will be conjectural or inferential. It must assume that the development of his thought was part of one pattern and that his later more esoteric writings were amplifications of earlier insights, in the same way that phraseoplerosis and archetypation were later sophistications of paraphrasis. To know what Bentham envisaged in 1782 we must turn to the disconnected scraps he wrote between 1811 and 1832, and particularly to his ontology.

The fundamental fictions like time and space are made by man but they also make man: they direct his thought, and the quality of it rests on the clarity and effectiveness of his language. Bentham’s resolute nominalism was as Utilitarian as any other part of his system. If language and logic are artificial tools for interpreting the universe, necessarily arbitrary devices which divide and classify an infinite series of events that are indivisible and unclassifiable, then they can and should be remade according to the standards of the greatest happiness principle.

For language and logic these standards are æsthetic, in the same sense that the choice of hypotheses in modern science is

important work, anticipating ‘the quantification of the predicate’ which Sir William Hamilton later claimed to have invented. See Passmore, *op. cit.*, p. 123, note.

governed by æsthetic criteria. As pure scientists try to formulate the simplest theory that will fit all the relevant facts, so did Bentham. His dictionary was an attempt to find Bertrand Russell's 'minimum vocabulary', that is, one in which no word can be defined in terms of the others.³⁷ The propositions of the logic of the will were shaped by the same criterion:

The words of the law ought to be weighed like diamonds. . . . In works of art, the perfection of art consists in its concealment: in a code of laws . . . the perfection of science will be attained, when its efforts are not perceived, and its results are characterized by NOBLE SIMPLICITY.³⁸ [Author's capitals].

Ironically, it was this canon that underlay Bentham's notorious later style.

But in his basic classifications the results were much better. Since language artificially divides a boundless universe, the more sharply and simply it does so, the better. What could be more clear and simple than two-part division? The grand comprehensive fiction of Bentham's system was, therefore, the method of 'exhaustive bifurcation'.

In Bentham's ontology, in the beginning are facts. Everything in the universe is either in motion or at rest. There are therefore states of things and events: this is the primitive division. In the centre of this world is feeling, thinking, communicating man. Events are non-human or human and 'an act, or action, is a name given to an event . . . [that has] the human will for the immediate cause of it'.³⁹ The basic facts of Bentham's logic are human acts. We watch men behave in certain ways. Because we often act similarly and are led to do so by previous psychological processes, we infer that our predispositions are general. This always seemed to him a basic undeniable fact of human nature and the ultimate empirical justification for his entire science of morals and legislation. Because all men form their general ideas by comparing behaviour, universal legislation is possible – if it is presented in concrete images. In a very early fragment he said:

We all sufficiently understand what is meant by, 'to do an act'; to walk, for example, to contemplate – to handle, to strike an object. It is the most general term we can make use of to denote any portion of Man's employment. An act is an act either of the mind alone or of the body: an act of the mind alone is what exhibits no motion. . . . An

act of the Body always produces a new bodily image in the imagination of him who considers it: . . . it represents an image that might be painted. Words designed to express that act, must in order to be understood, convey that image. An act of the Mind produces no bodily image . . . but no individual act of this sort can be known . . . but by some act which is an act of the body: . . . This act . . . is such as is found by experience to accompany it.

If the mental act in question be such as has accompanied the bodily act . . . in my own instance, I can obtain an idea of it: otherwise not. . . . The bodily acts therefore over which a Legislature can exercise its authority can be no others than what exhibit an image when properly described. . . .

These for the most part if not entirely are the same in one country as in other, under one set of laws, as under another. The images which they exhibit are therefore the same. The words that characterize them might therefore be the same.⁴⁰

Acts are internal or external, active or passive. Passive internal acts belong to the understanding and these are the province of classical deductive logic. The logic of the will is the science of active internal and external acts. Bentham of course emphatically denied that qualities or acts were more than linguistic fictions. It cannot be said often enough: his exhaustive bifurcation was merely an analytic convenience.

Bentham's new logic had two histories, an early one that ended about 1783, and a late one that began about 1811 and continued until he died in 1832. In the second he elaborated and refined the unfinished analyses he began in the first. The simple division between will and understanding no longer satisfied him. There are three kinds of volitional acts. He labelled them with ponderous neologisms, aware that these obscure pages would not be published. In 1831, when he was eighty-three, he made an outline.

In man two faculties. 1. active – the will 2. passive – the understanding. . . . If to logic of the understanding the name of *Noology* be given, that of *Thelematology* may be given to the logic of the will. . . . *Nomography* the branch of thelematology which regards expression given to discourse employed by the superior to direct the conduct of the inferior. So *deography* [expresses] . . . the will of an inferior to a superior and *pothography* of an equal to an equal. Of deography and pothography the importance swallowed up in Nomography. Nomo-

graphy therefore the denomination in every case of expression given to the faculty of the will.⁴¹

The distinction between the will and the understanding was a commonplace of faculty psychology. When Bentham borrowed it, he hoped to clear away the crude assumptions of existence that obscured it. Men spoke of the will as a real entity, but it was a fiction inferred from the acts of men.

'The Will is a faculty.' 'Volition is the exercise of that faculty.' . . . Such has been the language. Not that there is really any such thing as a little being that under the name of Will gets into men's heads, and exercises acts of volition, or any other acts: as some appear almost to have imagined. But it is man that wills, that exercises acts of volition: . . . howsoever it may be found convenient for many purposes to say, that the will does so and so, rather than that man wills in this or that manner. It carries the discourse, saves words, and marks out different operations more distinctly.⁴²

Nor did Bentham suppose that his division between states of things and events, non-human and human, external and internal, the will and the understanding, was the only possible or even the best one. He himself offered many alternative primary classifications: physical facts and psychological facts, positive and negative facts.⁴³ Sometimes he began with man's mind as active and passive rather than with nature in general.⁴⁴ It made little difference. He always arrived in the end at the fundamental distinction between will and understanding.

Government, then, is the regulation of actions. It is the imposition of the will of superiors over inferiors. Superior and inferior are defined by relative power to contribute to well-being or utility. In another conjectural history, a gem of common-sense simplicity, Bentham speculated on the origins of government.

A period may be easily imagined when men existed without laws, without obligations, without crimes, without rights. What would they then possess? Persons, things, actions: *persons* and *things*, the only real beings; *actions*, which exist only for a fleeting moment, which perish the instant that they are born, but which still leave a numerous posterity.

Among these actions, some will produce great evils, and the experience of these evils will give birth to the first moral and legislative

ideas. The strongest will desire to stop the course of these mischievous actions – they will call them crimes. This declaration of will, when clothed with an exterior sign, will receive the title of *law*.⁴⁵

It is a curious fact that though the whole of Bentham's political thought hangs on the distinction between the will and the standing, he never gave a clear account of it. Perhaps he thought it too commonplace to need it. Bacon had already made it, though Bentham borrowed it from Blackstone's list of conditions of human action: wisdom, probity, and power. What Bentham had in mind can, however, be pieced together. It was an adaptation of Hume's 'Reason is, and ought only to be the slave of the passions, and can never pretend to any other office than to serve and obey them'.⁴⁶ In 1818 Bentham said:

Interest appeals to the *will*, argument to the understanding. What can argument do against interest? The understanding is but the servant – the very slave to the will. What can be done against the master by application to the slave?⁴⁷

Although Bentham finally agreed with Hume that the understanding is in fact the slave of the passions, he had not always thought so. Nor did he think that it ought to be. His changing attitude shaped his political theory. In the 1770s he had optimistically assumed that political evil was the product of ignorance. He addressed his analyses to men in power, sure that they would welcome Utilitarianism when once they understood the reasons for it. When no one listened to him he had to admit the weakness of appeals to the understanding. Was this weakness innate, he wondered, or the artificial result of British mixed monarchy? If bad mental habits were at least partly the product of bad social and political organization, then political reform opened up the possibility of moral reform. This is the rationale of Bentham's theory of democracy. What is his definition of a democracy? It is the one form of government which harmoniously reconciles will and understanding.

In all governments, democracy excepted, reason is never employed by rulers as a guide to will, but always as a slave. Will being always determined by the personal interests of rulers, – by the universal interest never.⁴⁸

Though Bentham's interpretation of the roles played by will and understanding in political life changed radically, his definitions remained the same. He spoke of them as decisively different, but he did not think they really were. Though he several times repeated, 'Will occupies itself about the end, understanding about the means,'⁴⁹ they were both parts of the same process. Like all the terms in his vocabulary of psychology – interests, motives, desires, intentions – will and understanding are fictions describing pleasures and pains seen from different points of view. They are all species of linguistic shorthand for speaking of pleasures and pains concretely or abstractly, singly or in groups, with or without reference to fixed habit patterns, to the objects that aroused them, or to their behavioural consequences. They can also be described as stages of the mind's awareness.

But the will and the understanding are the fundamental, most general fictions of Bentham's psychology: they are *the* exhaustive bifurcation. If interests, motives, desires are classes of pleasures and pains seen in different connections, the will and the understanding are classes of classes. They are second-order abstractions. The classes of motives, interests, and desires which seem strongest, arise first, and immediately precede the act itself we call will. Those classes that seem weaker or more removed from the act we call understanding.

Bentham's account is similar to Hobbes', 'In deliberation, the last Appetite . . . immediately adhering to the action . . . is that wee call the Will.'⁵⁰ It is also similar to Hume's selfless humanism. He and Bentham both distinguished the will from the understanding by radius of reference. How wide and full were the considerations that led to action? What kind of vision was involved? Was it myopic, seeing nothing beyond the here and now? Then it was motivated by will. Or was it far-sighted and wide-angled, selecting relevant historical examples and testing them against future possibilities? Did it show foresight? Did it extend beyond the family or professional groups to the nation and the whole world? Then it was motivated by understanding.

The will is immediate inclination with little or no consideration of consequences, and understanding is measured assessment. In the most elaborate explanation he ever made of their differences, Bentham said in 1815:

To the *will* it is that the idea of a pleasure or an exemption applies itself in the *first* instance; in that stage its effect, if not conclusive, is *velleity*: by velleity, reference is made to the *understanding*, viz. 1. For striking a *balance* between the *value* of this *good*, and that of the *pain* or loss, if any, which present themselves as eventually about to stand associated with it: 2. Then, if the balance appears to be in its favour for the choice of *means*: thereupon if *action* be the result, *velleity* is perfected into *volition*, of which the correspondent action is the immediate consequence. For the process that has place, this description may serve alike in *all* cases: *time* occupied by it may be of any length; from a minute fraction of a *second*, as in ordinary cases, to any number of years.⁵¹

No amount of exegesis, however, can hide the ambiguity in Bentham's vocabulary of faculty psychology. Though he defined his fictions as a logician, he often used them as a politician. In his analytic writings the distinction between will and understanding was neutral; in his more popular political works, as *The Book of Fallacies*, it was an instrument of persuasion. The will was a bad thing, dictated by 'sinister' interests; the understanding was a good thing, directed by Utilitarian considerations.

Regretfully, Bentham fought his enemies with their own weapons. He turned to emotive meanings and propaganda after every other resource had failed him. His calm, quiet analyses went unheard and so he raised his voice.

Yet he never forgot that he was adding one set of fictions to another. The only real facts were pleasures and pains, stretching in an endless line from zero to infinity and shading imperceptibly together. Neutral dualisms were convenient, elegant, and necessary; but if they were paraphrastically defined, they in fact expressed different degrees of more or less. As it was often difficult or impossible to draw a line between the will and the understanding, so it was between other fundamental dualisms of Bentham's system: knowing and doing, art and science, civil and penal law, the aristocratic and democratic divisions of public opinion. Toward the end of his life he said once again:

As to distinction [between dualisms] . . . to draw any determinate boundary line . . . is plainly precluded by the nature of the case. . . .

As where physical light is concerned, it is impossible to say where dullness ends and gives place to brightness. . . .

Indeed, to no small extent the matter of good and the matter of evil are one and the same thing. Witness wealth: witness power.⁵²

How, then, did Bentham apply his neat analytic dualisms to the indeterminate welter of experience? The key word is *preponderance*. Though exact quantitative measurement was largely a counsel of perfection in the science of human behaviour, rough estimates of more or less could and often must be made. His method was one of his very important Logical Arrangements.

'preponderant.' – Constant use of this word, as applied to *benefits* in the account, as between *good* and *evil*, under the *greatest happiness system*. Without it, all statements as to good and evil, stand exposed to well-grounded denial.⁵³

He applied this word to all human experience, to all pleasures and pains, whether seen consequentially as good or evil acts or abstractly as the will and understanding.

When Bentham spoke of the product of human activity he called it art-and-science; when of the process, doing and knowing; when of the supposed mental faculties corresponding to them, abstracted from particular parts of the process, willing and understanding; when of the particular parts, interests, motives, and desires. Finally when an act was an exercise of sovereign will, of a superior over inferiors, he spoke of civil and penal law. Every law has civil and penal parts. The directive penal clauses issue from and appeal to the will; the preceding explanatory civil clauses, from and to the understanding. Because meaning itself is ultimately fixed by legislation, 'law', was the first word in Bentham's dictionary, the fateful one upon which the entire vocabulary of morals and politics depended.

Laws: The Propositions of Logic.

What is a law? No other word was harder to define fully. Bentham began confidently in the 1770s sharply distinguishing between the principle of utility and a law, and forestalling an army of critics who have accused him of confusing them.

Utility is not a Law. For utility is but a quality, a property; a Property an act has of increasing happiness; . . . Utility is a quality of many kinds of acts. But a command is one particular kind of act itself. And a

law is a command, – A dictate of utility is not a law. For a dictate of utility is but some one's opinion that there is utility in a certain mode of conduct. An opinion is an act of the understanding. But a *command* is an act of the will. And a law is a command.⁵⁴

Bentham was soon dissatisfied with this primitive definition. He saw that laws have many parts. What were they? Not all laws were commands; some were non-coercive. He saw, too, that what the law is and what it ought to be were very different. He knew what the law was – an arbitrary uncertain mass of ambiguities. What ought it to be? What was an ideal law?⁵⁵ We have seen that these questions led to *The Limits of Jurisprudence Defined* and that the logic of the will arose from Bentham's need to answer them.

By 1782 his definition was much more elaborate.

A law may be defined as an assemblage of signs declarative of a volition conceived or adopted by a *sovereign* in a state, concerning the conduct to be observed in a certain *case* or class of persons, who . . . are . . . subject to his power: such volition trusting for its accomplishment to the expectation of certain events which it is intended such declaration should upon occasion be a means of bringing to pass, and the prospect of which it is intended should act as a motive upon those whose conduct is in question.⁵⁶

Laws are concerned with three classes of power: over self, over individuals, and over groups. There are, then, three kinds: beneficial, private, and constitutional or public law. Bentham went on a brief orgy of neologisms, which he stopped abruptly when no one sympathized. Autocheiristic power, for example, was power over self, and private and public power were imperation *de singulis* and *de classibus*.⁵⁷

From the legislator's point of view, the basic division was between private and public law. Private law, in turn, was civil or penal. Bentham was puzzled by this commonplace bifurcation because most laws seemed to have both civil and penal parts. Here again it was a question of more or less. It seemed more accurate to speak of declaratory and coercive laws, depending on their relative quantity of exposition and command. But none of these divisions was exhaustive. Bentham invented two new and overriding ones, indirect (or transcendental) legislation, and direct (or substantive and adjective) legislation. Indirect

legislation is preventive legislation, a profound science of the future when legislators shall have become Utilitarians.* Direct legislation is contemporary law, which creates offences and punishes them after they occur.⁵⁸ Although his pages on indirect legislation are among his most interesting, Bentham cared far more for concrete reforms than remote dreams, and usually devoted himself largely to analyses of substantive and adjective law.

These correspond to the division between will and understanding in his psychology, and to the two kinds of statements, imperatives and interrogatives, that his new logic was designed to analyse. Substantive law directly expresses the legislator's ends; adjective law, his means.⁵⁹ The first is law proper or commands, civil, penal, and constitutional. The second is the subsidiary law of procedure and evidence.

This distinction was more than a thread leading Bentham out of the maze of Chapter XVII. It was the tie that bound his massive life-work in morals and politics together. All of his hundreds of pages of unpublished *Preparatory Principles*, *A Fragment*, *The Principles of Morals*, *Principles of the Civil Code*, *Principles of the Penal Code*, *Principles of International Law*, *Nomography*, *Pannomion*, and *Constitutional Code* may be seen as parts of the substantive branch of the logic of the will. *The Principles of Judicial Procedure*, with thousands of unpublished pages, and the great *Rationale of Evidence* belong to the adjective branch. By analogy with classical logic, his critical writings may be seen as exposés of fallacies, from *A Fragment and Defence of Usury* to *The Book of Fallacies*, *Not Paul but Jesus* and *Lord Brougham Displayed* (1832).

As early as the 1770s Bentham began to classify fallacies. He planned a chapter for his unpublished *Critical Elements of Jurisprudence* called 'Obstacles to Improvement'. Eager to return to the positive side of his system, he left a bare outline only, but over forty years later he included these obstacles in *The Book of Fallacies*. Some of them were: the charge of Utopianism; good in theory, bad in practice; reverence for antiquity and authority. He intended to list professional prejudices by classes and some of his projected headings were: 'Of Lawyers. Of Divines. Of Authors, Popular, etc. Universities. Oaths. Subscriptions. Party. Indolence. Insensibility to Evils Remote. Eulogy of

* See Chapter 6 below.

Greeks and Romans. . . . Divines – Legislators Corrupted by Them. Oratory Fiction, e.g. King's Peace.⁶⁰

Bentham's ideal law had three parts: a categorical command, an implicit dictionary, and a rationale. If men were expected to obey commands, they must first comprehend their meaning and then the reasons for them. It was not enough to set will over will. The Utilitarian legislator appealed as well from understanding to understanding. Bentham knew that law always obligates someone in the first instance, and obligation taken alone is painful. Therefore he was himself obliged to justify his laws by showing their ultimate balance of pleasure over pain. Once Bentham had settled the meaning of law, he could simultaneously define the fictions of morals and politics and expound the particular propositions of his logic. For the terms and propositions refer to limited classes of human acts while the law regulates all behaviour. The law is the class of classes and determines the relationship of subordinate classes and fictions describing them.

The law or the logic of the will, then, was Bentham's method of reconciling the ambiguities of the principle of utility. As an analysis of the structure of command, it was an attempt to bridge the *is*, the means, the facts of pleasure and pain, and the *ought*, the end, the prescriptive principle of the greatest happiness of the greatest number. Again by analogy, it could be broken down into ordered elements in the same way as grammar or deductive logic:

As words of any sort may be *parsed* by referring them to classes entitled by the words a *verb*, a *noun* . . . so words . . . may be parsed by referring them to the classes entitled by the words *genus*, *species*, *subject*, *predicate*, and the like; as may also entire propositions of the argumentative stamp by referring them to the classes entitled by the words *Barbara*, *celarent*, *darii*, and so on. In the same manner may propositions of the legislative stamp be parsed by referring them to the classes entitled law against simple personal injuries, law against semi-public offences, law against public offences: imperative provision, qualificative, limitative, exceptive, justificative, substantive law, adjective law, remedial law, punitive law.⁶¹

This, then, was Bentham's life-work: not primarily a psychology or an ethics, but a legislative grammar. When it was made he hoped that a school might be established, teaching 'not the

art of forensic disputation for the emolument of individuals, but the art of legislation for the benefit of empires'.⁶² At least twice he planned such a school himself, the first time in 1790 before Panopticon pre-empted his attention, and again informally in the 1820s when he usually boarded a small squad of foreign recruits at Queen Square Place and taught them the principles of utility. If he sometimes described himself as a new Newton, he also secretly felt that he was a new Aristotle; and if Aristotle's pupils were Peripatetics, Bentham envisioned a school of Circumgyrators.

As his new logic was an extension of classical logic, an analysis of those volitional and interrogative propositions neglected by it, so Bentham developed his logic far beyond the bounds of customary law itself. It followed the pattern of his three Ages of Law – Vengeance, Impartial Punishment, and Prevention. If government is the best regulator of human actions, it must begin in the second age and move on to the third. Legislation should have three aims, 'to arrest, to indemnify, to prevent'.⁶³ After the legislator has defined bad actions, he punishes those who commit them, compensates their victims, and looks for ways to eliminate them in future. How could he eliminate them?

Bentham's imagination soared and, had the facts of English law not been earthbound, he foresaw the ultimate disappearance of law. For preventive or indirect legislation worked through other than the political sanction of direct legislation. It encouraged the development of the moral sanction, so that people should learn to do for themselves what the law had always done for them. In the ideal future, the legislator shall have become a mass moralist, and every man his own legislator. This is the sense in which the law is everything, for the legislator creates new values as well as sanctions those that are already popularly accepted. He defines the language of morals as well as politics. This is one of the senses, too, in which Bentham was an individualist, but here his individualism was almost wildly prescriptive.*

* As we know, he began his analyses in *The Principles of Morals* by classifying offences, continued them in *The Limits of Jurisprudence* by defining a complete law, and carried them to an impracticable extreme in the intended Chapter XVIII, 'Indirect Legislation'. A few of these pages are in print as Part IV, 'Indirect Means of Preventing Offences, Principles of the Penal Code', in *The Theory of Legislation*, *op. cit.* They are, however, largely confined to the legislator's cultivation of the political sanction and are a mere drop in the

Appealing to his favourite medical analogy, Bentham saw that it was as quixotic to talk of preventive legislation before an exhaustive analysis of direct legislation as it was to plan preventive medicine before a science of anatomy had been made. In 1783, therefore, he abandoned transcendental legislation and ever afterwards devoted himself to a complete anatomy of direct law.

In Bentham's logic of the will or anatomy of law, then, the first classes of subordinate propositions and fictions to be analysed were those belonging to civil and penal law. That is, he parsed laws referring to simple personal injuries. Why did he begin here?

In 1781 Lord Shelburne asked him why he had not made constitutional law his first object of study. Bentham answered:

The general end of government . . . is the happiness of the community: the happiness of the community is made up of the several happinesses . . . of the several individual members of which that body is composed – These happinesses are all reducible into such and such pains or evils averted – and such or such pleasures or advantages procured or secured.⁶⁴

And these individual pleasures and pains are the subject-matter of civil and penal law. No matter what part of his system he articulated, the basic fact for Bentham was sensitive man. To put it another way, the terms of civil and penal law were first-order fictions; those of constitutional law were more abstract, and definable in the first instance only through simpler fictions rather than direct reference to pleasures and pains. It was therefore necessary to define these simpler fictions first, for 'the idea of a complete penal code includes in itself the complete idea of all the subjects of the other codes'.⁶⁵

Of all the pains and pleasures that men suffer and enjoy, none affected them more profoundly than those related to insecurity and security. Because the axioms of security, the first sub-

ocean of Bentham's original grand design. The total neglect of these manuscripts is mystifying and deplorable, for next to the logic of the will itself, they may well be his most original contribution to the history of thought. They are all the more significant now that we are all familiar with totalitarianism as government-by-every-means. For a fuller discussion of indirect legislation, see pp. 291 *ff.* below.

ordinate end of good government, belong to civil and penal law, this was all the more reason why Bentham considered them first.⁶⁶

A final reason followed from his axioms of method. In the hierarchy of volitional propositions, those should come first which most clearly and directly express the will of the legislator. In constitutional law, commands are issued to large groups of people rather than from man to man. Here is Bentham's individualism in another form.

Because private offences were most nearly related to pleasures and pains, Bentham began his analyses with them and eventually arrived at the highest-order political abstractions. There are four classes of private offences: against person, property, reputation, and condition in life. One sub-class of conditions in life is domestic: husband, wife; parents, children; master, servant. Bentham generalized from the master-servant relationship to large-scale political powers, 'all of them corresponding to, and constituted by, so many modes of *servantship*, as towards the community at large, considered in the character of master'.⁶⁷

The Dictionary of Politics.

There was a hierarchy of fictions as well as propositions in the logic of the will. It was in fact through this hierarchy that Bentham bridged the gulf between the 'muddy ditch' of the lawyer's particulars and the ethereal generalities of the philosopher, between the two levels of the principle of utility, descriptive and prescriptive, the 'is' and the 'ought'. Here as elsewhere he refused to draw sharp distinctions, and implied that form and content (or the logic of the will and the principle of utility) interact.

If civil and penal law preceded other analyses, then the first word to be defined after 'law' itself, was 'offence'.

It possesses clearness by itself; it presents an image: it addresses itself to the senses, it is intelligible to the most limited mind. An offence is an act from which evil results.⁶⁸

But if 'offence' is the first post-legal fiction in Bentham's dictionary, there were at least two other pre-legal ones assumed in his 'conjectural history' of the state of nature.* These were

* For his picture of the state of nature, see pp.206-8 below.

'service' and 'possession'. For even in the most primitive society men perform acts that give their fellows pleasure. They build a fire and others join them around it; they hunt and divide the kill. When these pleasures carry over from day to day, when they become settled expectations, they may be considered 'possessions'.

What is the state of nature? It is a state of uncertainty where primitive man lives from hand to mouth, from day to day, unable to control events. If he has 'possessions' today, they may be taken from him tomorrow. The law raises him out of this condition. Men of strong will agree to punish acts with painful consequences and to assure him that he may enjoy the fruits of long-range efforts. For it is a fact that man takes pleasure in planning, anticipating, controlling his small area of experience, and feeling sure that what is his today will be his tomorrow. This kind of happy feeling of control over events through time is what Bentham meant by property. 'There is no such thing as natural property . . . it is entirely the work of law. Property is nothing but a basis of expectation.'⁶⁹

Of course the legislator refined these vague primitive fictions and tried to define them precisely. Though 'possession' seemed simple to define, few words were more difficult; and few demanded definition more urgently.

Everything which is most precious to a man may depend upon this question. . . . How shall these difficulties be resolved? Consult first primitive utility, and if it be found neuter, indifferent, then follow the popular ideas; collect them when they have decided – fix them when they are wavering – supply them when they are wanting; but by one method or another resolve these subtleties; . . . Instead of the thorny question of possession, substitute that of honest intention, which is more simple.⁷⁰

This, in a nutshell, is Bentham's theory of definition: 'resolve these subtleties. . . .' The notion of possession was so fundamental in Bentham's system that he ultimately summed up his civil code in two simple rules:

Rule 1. Make known to every man what belongs to him.

Rule 2. Burthen no man with any thing that does *not* belong to him.⁷¹

Once Bentham had settled the meaning of 'offence', the whole vocabulary of second-order fictions followed simultaneously. A

crime, then, is an offence to which punishment is attached. Punishment is a species of pains so carefully measured that it outweighs the initial evil of the offence just enough to prevent it.

To assure to individuals the possession of a certain good, is to confer a *right* upon them. To direct men to abstain from all acts which may disturb the enjoyment of certain others, is to impose an *obligation* on them. To make them liable to contribute by a certain act to the enjoyment of their fellows, is to subject them to a *service*.^{72*}

Though it was possible and useful to establish an analytic order of terms, Bentham occasionally admitted that in fact, 'The idea of *law, offence, right, obligation, service* . . . are born together . . . exist together, and . . . are inseparably connected.'⁷³

All these fictions are ultimates which describe classes of human acts. They have no superior genus. There are, however, higher orders of fictions whose definitions depend on them. Power is, then, the right to control human acts, and responsible political power is, as we have seen, a trust, a generalization from the master-servant relationship. Conversely, a trust is a power burdened with obligation to perform services.⁷⁴ Seen from another angle, power is conferred on one man by taking away the liberty or security of another.⁷⁵

These fictions are all relational terms. They define the connections between classes of men in society. Higher-order abstractions like political power are harder to define than words like 'offence' because the range of people they refer to is vastly wider. Though political power is similar to domestic power, it has so many variations and is often divided among so many authorities, that to analyse it is like defining 'possession', 'a metaphysical labour of the highest difficulty, but of the greatest importance'.⁷⁶

It was of course also possible to consider power as a first-order fiction, that is, as an immediate source of pleasure to those who held it. As Bentham grew older and more experienced, he often did so. Indeed, as we know, he began to describe the love of power as one of the most powerful drives of man.

Usually however he kept to his definition of power as direction of human behaviour. What are the instruments of political power? They are punishment – and reward. Bentham's analysis

* i.e., a legal 'service'. Men perform services for each other without coercion.

of reward is one of his most original contributions and like his discussion of indirect legislation was an effort to extend the boundaries of *de facto* law. A rationale of reward seemed particularly urgent to him because 'remuneratory' or 'attractive' power was devastatingly effective, yet usually obscure if not secret.

The attractive power which is exercised by means of reward, is more dangerous than the coercive power, because it is liable to be more arbitrary. Every rich man possesses a portion of it in consequence of his wealth, without possessing any political power by name.⁷⁷

The ramifications of reward were another one of Bentham's life-long interests, and the implications for his democratic political theory were far-reaching. He was terrified only by irresponsible power, not by any amount of power *per se*. As he studied the operations of British government, he came to believe that it was a sink-hole of irresponsible power. For reward in the shape of offices and 'influence', which quickly degenerated into corruption, were the characteristic levers of political power in eighteenth-century England. And who could estimate the effects of reward? Pleasure was in any case more difficult to measure than pain, because it was less regular and less forceful. Beyond that, the spoils of office was a subject that members of government were understandably reticent about. It was not for nothing that equality was Bentham's fourth subordinate end of government. He wanted to minimize the effects of attractive power, not only as naked wealth but in its more hidden form of 'influence'. When it became clear that the only way to make reward responsible was through popular sovereignty, he became a democrat.*

A particularly interesting by-path of Bentham's analysis was his recognition of a kind of higher punishment, the obverse of reward. This took at least two forms. An 'influenced' man lost his freedom to act as his own understanding dictated; he was subject to the will of his patron. In the second place, the threat of dismissal or withdrawal of funds reinforced his subjugation.†

* See Appendix G, 'Parliamentary Reform'.

† Again, like Indirect Legislation, Bentham's work on Reward is especially significant today, when unprecedented numbers of people are subjected to the insidious pressures of expense-account society. See above Chapter I, pp. 53-4, and the *Rationale of Reward*, II, re-edited and translated from

In the order of political fictions, sovereignty was the highest abstraction. Bentham defined it as legally unrestrained power. This was the popular usage and he gladly followed it, as he had in defining power as trust. He adapted it, as usual, paraphrastically. Sovereignty was no metaphysical entity but rather an established system of pleasures and pains. What is it, he asked, that makes a state?

It is the habit of command in the few, coupled with the habit of submission in the many. Are those habits formed, he is a lawful sovereign. Is it as yet unformed? He is an usurper.⁷⁸

Like Justice Holmes, Bentham felt that sovereignty was either a question of fact or nothing. Whose acts were actually legally irresponsible? Neither man supposed that no restraints on sovereign power existed. They agreed that extra-legal checks could and did control it. In political codes certain laws had no punishments attached. They described national privileges or 'rights', such as freedom to worship, free speech, the right to carry arms, free assembly. These laws, Bentham felt:

are of great importance, though positive punishments would be of no force: they are attended by the immediate punishment of dishonour to the sovereign, and discontent on the part of his subjects: – by ulterior punishment in revolt, and loss of sovereignty.⁷⁹

It is impossible to set predetermined limits to checks on sovereign power. Any acts that lead to popular rebellion are such restraints. As Justice Holmes said, they include whatever people feel most strongly about. His own favourite example was the price of beer in a German university town: if it were raised a penny, the students would revolt.

Bentham's early analyses of sovereignty also had wide-ranging implications for his theory of democracy. For many years he believed that extra-legal or moral sanctions were strong enough to control abuses of sovereign power. Above all he demanded a completely free press as the indispensable guarantor of responsible power. When government began to tighten its network of censorship in the 1790s, Bentham turned to democracy.

Dumont's French *Théorie des Peines et des Récompenses*, 1811, in turn based on two early English manuscripts. For Bentham's mature views, see *Official Aptitude Maximized*, V, 263 ff.

A Well-made Logic: Conditions.

The fictions and propositions of the logic of the will followed an order, then, from civil and penal to constitutional and finally to international law, which again had no possible legal sanctions. Bentham thought that ultimately morality would become so highly developed that it would replace the concept of legal justice in international relations as well as in private life.⁸⁰ His hierarchy began with the single feeling man and moved up through ever-widening groups to all mankind. This ever-expanding breadth of interest and sympathy was more than a formal logical consideration: it was the heart of his definition of civilization. The civilized man is he who has stripped himself of all parochialisms and genuinely considers all men brothers.* This was another insight that he borrowed from Hume.

Yet Bentham's originality lay just here, in putting moral insights to use by first incorporating them in a systematic analytic structure. His imaginative sympathy for masses of men was adapted in two ways in his logic of the will: in the overall movement from civil to international law and in his calculus of evil. Bentham devised the calculus as an attempt to estimate the quantitative effects of certain acts called 'crimes', as an aid to good government and not as a doctrine of ethical theory.

What are the conditions and characteristics of a well-made logic of the will? The first is an accurate assessment of the orders of evil. Unless a legislator is aware of the consequences of acts, he cannot even define 'crime', much less prescribe appropriately weak or strong punishments for it. When Bentham analysed the constituents of value as pleasures and pains,⁸¹ he began with one man and listed his responses: intensity, duration, certainty, propinquity, fecundity and purity. But the seventh element was the crucial one in law: extent. Other considerations apart, offences are as evil as the range of persons they affect, and a public offence is more dangerous than a private one. Just as there are orders of fictions, so there are orders of evil, and Bentham's analysis of them was original, characteristic, often repeated, and fundamental.

Evil which immediately strikes particular individuals is first-order, subdivided into primitive and derivative according to the radius of people affected. Second-order evil spreads through an

* See below Chapter 5, pp. 207-8, 222-3, and Chapter 6, pp. 309-12

indefinite number or the entire community. It also has two branches, alarm and danger, or the pain of fear and the impersonal probability that other evils will follow from an earlier one.⁸² Thus Bentham argued that punishment of the innocent is a greater evil than non-punishment of the guilty, but only if the non-guilty are popularly known or believed to be so. For then the mischief of the second order is intense. People fear that the same evil may befall them; they also suffer the pain of social sympathy. Otherwise, an innocent victim who is not known to be so may actually suffer less from punishment than a guilty one, for he at least may have the solace of self-righteousness or wounded innocence.^{83*}

Second, the logic of the will is a class logic. 'It is in the power of making men act by *class*,' Bentham said, 'that the strength of government consists.'⁸⁴ Its prerequisite dictionary is occupied in distributing groups of people into logical not social classes. It has subjects and objects; it commands someone to do something – to himself (self-regarding law); to other individuals (private law); to groups (semi-public law); to his fellow citizens in general (public or constitutional law). It is a study of variously complex human relationships, dyadic, triadic, multiple.

Though Bentham never fully explained what he intended to include under a 'logic of the will', he evidently used the phrase very generally to cover the whole structure of human action. He began with individuals, their immediate pleasures and pains, and a Utilitarian rationale or consideration of consequences; he then considered two-term relations between sovereign command and popular obedience; continued with three-term relations between branches of sovereign power (King and Parliament) and electors; and finished with the indefinitely complex up-and-down relations between general classes of inferiors, superiors, and equals.†

Bentham turned to constitutional law because the legislator ultimately controls all social relationships. His decisions have the widest effect, and though he is in a position to accomplish the

* This is of course rather simple-minded, for the innocent may torment themselves with imagined guilt, and the guilty soothe themselves with imagined innocence.

† Deography, nomography, and pothography, we may remember, were the names Bentham gave to describe these relationships, see p. 164 above.

greatest happiness of the greatest number, he may also inflict the greatest evils.

This class logic changed accordingly from an analytic device to sociological description, as Bentham's professional role expanded from Metaphysician to Statesman. He began as a legal analyst; he became a sociologist, studying the mass reaction to political fictions, myths, and symbols. In 1790 he first deplored the powerful large-scale perversion of understanding caused by such symbolic manipulations. He began to understand that there are two logics of the will – of the *governed* as well as of their *governors*, passive and active. Class became a fact and not merely an abstraction. Twenty years later, when he wrote on these subjects again, he tried as usual to bridge the gap. The guarantee against class warfare, he felt, was in the greatest possible extension of national 'rights' or moral checks to sovereign power. This was another way of saying the same thing that he had insisted upon since 1769; complete freedom to assemble, speak, and write is absolutely essential to good government. The dynamic of the logic of the governed leads finally to rebellion. Criticism must have an outlet. If government ruthlessly silences its citizens, it must be prepared for revolution.

Everywhere, and at all time, on the part of the subject many, howsoever treated, exists the disposition to obsequiousness. *Birth*, observation of the direction taken by *rewards* and *punishments*, by *praise* and *dispraise*, of the habit and language of all around, – by the concurrence of all these causes is the disposition produced and kept up.

To alter or weaken this disposition, in such sort as to produce revolution in government . . . nothing has ever sufficed . . . short of the extremity of misrule. . . .

Of a government that is not despotic, it is therefore the essential character even to *cherish* the disposition to eventual resistance.⁸⁵

Essential to this disposition, then, is absolutely free communication.

Were the commands of government directed at individuals, it need fear little, for the single man was helpless. But the main strength of the legislator lay in his power of aggregation and disaggregation,* that is, of classifying and declassifying groups of

* Benthamic neologisms. This insight is shared by Bertrand de Jouvenel, who defines political science as 'the study of the way in which aggregates are formed and of the conditions necessary to their stability'. *Sovereignty* (Cambridge: Cambridge University Press, 1957), p. 25.

people. He sowed the seeds of civil war when he distributed rights and obligations invidiously, shutting off whole classes of men from some kinds of acts. If, for example, he set up a closed aristocracy or religious tests for public benefits, he could ultimately expect to reap revolution.

The correlative of command was obedience, and the third characteristic of a well-made logic of the will was speed. The good legislator expressed himself clearly and quickly, and his directions were at once known and followed. By far the greatest proportion of Bentham's writings were plans for perfecting these mechanics, with codes of written law to replace common law, with codes of procedure and evidence to supersede the inefficient methods in use, with attacks on every obstruction to rapid justice, from fees and oaths to the power of pardon and the jury system.

Here he argued as he always did, that his reforms were essentially conservative. He pleaded for extensions of actual practices or returns to former forgotten customs, not for untried panaceas. When he attempted to overhaul the cumbrous procedure in equity, he pointed out that there were many successful examples of summary procedure already in use – in Courts of Requests, Courts of Conscience, Courts Martial, courts held by Justices of the Peace acting singly, Bankruptcy Commissions, and in committees of either House of Parliament when collecting evidence.⁸⁶

Bentham's emphasis on speed and efficiency, joined with his definition of sovereignty, has occasionally led to charges of authoritarianism. These can be laid to rest abruptly. All Utilitarian power is *responsible* power. It is therefore also identifiable and articulated power. Bentham wanted supreme command to be located in one central removable authority and all its subordinate ramifications to be traced and labelled. Until men know whom and why they obey, much power will continue to be exercised arbitrarily, furtively, and irrationally. He therefore roundly condemned all unauthorized commands. Almost everyone connected with a legal suit, however remotely, had open or hidden power to overthrow it. An attorney's clerk could intentionally or absentmindedly make mistakes in the written pleadings; the judge could neglect precedents or render a sentence of nullity; a jury could find against the court's instructions; and, finally, the King could pardon a convicted

offender. Bentham called this power the 'maleficence-licence institution',⁸⁷ and exclaimed:

Everywhere, on the footing on which it stands at present, the power thus denominated is a relic of primitive barbarism: it is the power of frustrating the declared will of the legislator.⁸⁸

Rights: The Fruits of Law.

There were certain particularly troublesome words and phrases in Bentham's dictionary. These were expressions like 'justice', 'liberty', 'natural law', and 'rights'. They were especially difficult to define, not on their own account, but because they had through generations accumulated such heavy burdens of emotive meaning. If he insisted upon the urgency of a new dictionary, it was because these super-charged words led to political catastrophe.

Around 1796 Bentham wrote a series of exposés of the French Declarations of Rights.⁸⁹ For a few years he did nothing with them, aware that under the combined influence of government suppression and genuine anti-French fervour his audience was already converted. In 1801, however, he offered these papers diffidently to William Cobbett, freshly arrived from America and about to inaugurate a violently anti-French newspaper, *The Porcupine*. In a covering letter Bentham explained:

Provoked to see by what nonsense so much mischief had been done I took up my pen to take a few notes and suffering it to go on as fast as it would move, till growing warm as I advanced, I suffered it to go on running to the end and having set my pick-ax to work on the fabric of nonsense, never let it stop a moment, till I saw there was [nothing left].⁹⁰

No one has given a better description of Bentham's typical out-pouring method than this one he offered himself. He hurriedly added a new exordium:

Passion, the child of nature, gives spurs: prudence, the offspring of experience, a bridle: what has been the object of this heroic . . . [Declaration of Rights?] – to sharpen the spurs, and to destroy the bridle.

This a declaration of rights? No, nor of anything else – but the ignorance, the folly, the rashness, the self-conceit, the vanity – the

insolence, the tyranny of the framers, the enactors, and the propagators.⁹¹

In expounding 'rights' and similar words, Bentham was always forced to give two definitions: the current emotive one, in which passion sharpened the spurs and destroyed the bridle, and his own Utilitarian paraphrastic one, in which prudence overruled passion. This was at least one of the ways that his new science of morals and legislation differed from older established disciplines: other scientists spoke in a neutral accepted vocabulary; he perforce spoke in rebel neologisms. This was also one of the few areas in which his thought did not change. He loathed these fictions when he first read them in Locke as a child and he loathed them when he died. His criticisms were much the same and so were his alternative definitions. For the vocabulary of rights was everybody's bulwark and no one would abandon it. He no sooner defeated it in one place than it reappeared in another.*

He traced it from Plato through the continental jurists, Vattel, Burslem, 'the Grotii and the Puffendorffs [sic] . . . each one sitting in his armchair',⁹² down to Montesquieu. He found 'natural rights' in England as well, in Hobbes, Locke, Hutcheson, and Shaftesbury; among Tories like Blackstone and republicans like Dr Price and Godwin. Rights were hauled in to support the Stuart cause; they were invoked by the Hanoverians. They were used to condemn the Revolution of 1688 and to glorify it; to defend the *status quo* and to denounce it. They underlay the American as well as the French Revolution, and Bentham's early contempt for the American experiment had the same origin. Both revolutions were examples of Anarchical Fallacies, whereby misuse of language led to violence.

Bentham said little about the American Revolution. During its critical years he was preoccupied with his legal analysis. In

* And they reappear today. Neither Hume, Bentham, Marx, Justice Holmes, Veblen, John Dewey, nor the logical positivists have routed them. They can be found in the Atlantic Charter, President Roosevelt's Four Freedoms, in Catholic social philosophies like Jacques Maritain's *The Rights of Man and Natural Law*, and in Walter Lippmann's *The Public Philosophy*. For one of the most recent criticisms in this dispiriting logomachy, see Margaret Macdonald, 'Natural Rights', *Philosophy, Politics, and Society*, ed. Peter Laslett (Oxford: Basil Blackwell, 1956). Once again, she insists, as Bentham did so long ago, that assertions about natural rights are value judgments.

1776 he did, however, read Dr Price's pamphlet, 'Observations on Civil Liberty and the Justice and Policy of the War with America'. It served only to reinforce his inherited Toryism, for he saw no benefit in exchanging one set of bad ideas for another. 'Dr Price with his self-government,' Bentham said in 1793, 'made me an anti-American.'⁹³ For Dr Price was an irresponsible advocate of 'liberty' and 'natural rights', a verbal revolutionary. He claimed that every man has a natural right to liberty, defined as self-government. Every man should be his own legislator.⁹⁴ This was, as Bentham never stopped repeating, an invitation to anarchy, for Dr Price:

having given such a definition of liberty as excludes from the possession of it every human being that ever existed, and having given us to understand that all men not possessed of liberty according to that definition . . . are slaves, it follows that all Englishmen are slaves. But when a man finds himself a slave . . . the best thing he can do, and the sooner the better, is to shake off his chains, and if any other man attempt to stop him beat his brains out.⁹⁵

In the whole mass of Bentham manuscripts there are only a few loose sheets on the American Revolution. In 1776 he wrote a critique of the Declaration of Independence and its 'nonsense' about inalienable rights.

This they 'hold to be' a 'truth self-evident.' At the same time to secure those rights they are satisfied that Government should be instituted. They see not . . . that nothing that was ever called Government ever was or ever could be exercised but at the expence of one or other of those rights, that . . . some one or other of those pretended inalienable rights is alienated. . . . In these tenets they have outdone the utmost extravagance of all former fanatics. . . .

What is it they mean when they say all men are created equal? . . . Do they know of any other way in which men are created . . . in which they themselves were created, than by being *born*? . . . Is the child born equal to his Parents, born equal to the Magistrates of his country? In what sense is he their equal?⁹⁶

This rhetorical blast was begun in the same way as *A Fragment on Government*, as a favour for John Lind, a jovial but disorganized friend who was trying to make a career as a popular journalist. Lind had supposed that an attack on Blackstone would be

popular. He asked for Bentham's opinions of his first draft. Bentham at once sat down and wrote a much more thorough and biting commentary of his own. Lind cheerfully recognized its superiority and began to hunt for a new subject. He chose to write instead *A Review of the Acts of the Thirteenth Parliament*, including a defence of its anti-American measures. Once again Bentham offered him an outline to guide his ideas, but this time Lind carried through alone. Bentham became bored and turned gratefully back to his legal analyses.

After a few years he took another look at the American experiment and was delighted to discover that it was a rousing success. For the rest of his life it was his model of a working democracy, and he saw no advantage in reviewing his old attack on its origins. But the attack he abandoned against the American Revolution he levelled again at the French.

The substance of his charge against the entire army of natural law and rights enthusiasts was this: they neglected Hume's distinction between *is* and *ought*.

The question of fact and the question of propriety are eternally confounded. Sometimes it is the latter that is put for the former: . . . [as in] Sir W. Blackstone's Commentaries. . . . More frequently the former for the latter: as in . . . Montesquieu. The books that have been written on the laws of nature have scarce any other foundation than this mistake. There are accordingly two sorts of propositions which are given indiscriminately . . . the one describing how things are, the other how they ought to be. Parents are disposed to maintain their children: Parents ought to maintain their children. Whatever truth there is in the latter of these propositions it is widely different from, nor is it a consequence of, the former. . . .

Germany more especially is still full of writers and lecturers on the *jus naturae* who do not know yet what it is they are writing or reading about, history or policy: the moral history of man, or the arts of government and legislation. Shew the separation between these two objects and the phantom of the law of nature disappears.⁹⁷

These enthusiasts were victims of their own vocabularies, unwittingly confusing opinions and laws. Bentham's criticism followed from his definition of law as a public command with a correlative, obedience. But a 'law of nature' is a private value judgment, one man's assertion that he feels strongly about something. It is 'a pretence for exercising illegal despotism'.⁹⁸

These pretended sacred inviolable . . . Laws of Nature are an invention of men's impatience in concert with their indolence. When a man is very angry with a usage he sees prevail, or a law he sees established, but cannot express why, he says this usage or this law is against a Law of Nature. He says not that it is inconsistent with the happiness of the community: for that would call upon him to shew how: which is more perhaps than he is able. He says not that it is contrary to a dictate of utility: for a dictate of utility . . . is no more than his opinion of what is useful, and other men may have an opinion as well as he. But he says it is against a Law of Nature: and a Law of Nature being a sacred thing, which multitudes have concurred in magnifying, this gives him a pretence to indulge his spleen, and to run out into invectives.⁹⁹

Bentham was not always so sarcastic. He made a genuine effort to understand how this seemingly irresistible propensity to talk of 'rights' and 'natural laws' had come about. He explained it by applying Hume's theory of causal connection to the logic of the will.

It is the nature of a command when backed by punishment to produce uniformity among actions: Men love to know the causes of things: and when they do not know them to talk as if they did. Seeing uniformity anywhere else they must there also have a cause for it, and the cause must be a law.¹⁰⁰

The expression 'law of nature' was doubly metaphorical; physical 'laws of nature' were as imaginary as moral or political ones.

This stone, placed in certain circumstances, moves towards the earth. This motion is not a Law. Ten thousand stones, placed in similar circumstances, move also towards the earth. Neither is here a Law. There is a certain *uniformity* observable in the motions of all these stones. But neither is this *uniformity* a Law. Finding that other motions have their cause, and concluding that these must have one too, we give a name beforehand to that cause, not professing to know any thing of its nature. We call it attraction: . . .

But it is not in virtue of any Law, that stones move toward the earth. Attraction is not a Law. For what a Law is, we know. But of attraction we know nothing, beyond the name. And thus we are cleared of one branch of the pretended Laws of Nature.¹⁰¹

Inevitably Bentham fitted his criticisms of the omnipresent advocates of 'rights' into his logic of the will. Their substantializations were of course fallacies, and he classified them in *The Principles of Morals* under the principle of sympathy and antipathy, one of the two opposed to utility. The principle of asceticism, the second, was always opposed to utility; the principle of sympathy wavered. He dismissed them both, 'One account may serve for all of them. They consist . . . in so many contrivances for avoiding the obligation of appealing to any external standard.'¹⁰² They appeal blatantly to the will. Only the principle of utility appeals to the understanding.

As in the constructive parts of his system, Bentham trimmed his criticisms to fit his audience. When Dr Price was popular, he attacked Dr Price; when Godwin was fashionable, he exposed 'natural justice'. Here again Locke was a life-long concern. Regardless of the changes in his own political philosophy, Bentham persistently condemned Locke's verbal mythology of original contract, justice equated with property, the 'natural rights' of property and equality. He charged Locke with the standard is-ought confusion, the transformation of a personal wish into a supposed historical description.

Bentham thought that Sir Robert Filmer, whose *Patriarcha* Locke had pulverized in his *First Treatise of Government*, was more realistic. Filmer's 'divine right of kings' was as indefensible as Locke's 'natural rights', but at least it was based on fairly convincing natural and historical analogy. For nothing was plainer to Bentham, reviewing his own childhood, than that the natural form of government is not equality but domestic autocracy. The natural state of man is subjection.

Filmer's origin of government is exemplified every where: Locke's scheme of government has not ever . . . been exemplified any where. In every family there is government, the father the sovereign: the mother and children, subjects. . . . According to Locke's scheme, men knew nothing at all of government till they met together and agreed to make one. Locke had speculated so deeply, and reasoned so ingeniously, as to have forgot that he was not of age when he came into the world.^{103*}

* Halévy quoted parts of this essay in his invaluable notes to *La Jeunesse*, pp. 416ff. Guessing that this undated work was written about 1796, after Bentham had become completely disillusioned with the French Revolution,

Once Bentham had cleared the ground of all these troublesome fictions, he offered his simple straightforward alternative definitions. Liberty, equality, rights, justice, property were the products of law. They were meaningful only if they referred ultimately to specific human acts and feelings, to pleasures and pains. If a man had a right to something, all it could mean was that government would guarantee his use and enjoyment of it. Together with these other fictions, rights were legally guaranteed patterns of behaviour.

There were several purposes behind Bentham's definitions. He wanted to identify them as significant elements of his logic; to persuade others to adopt them; and to show that they were at once more simple and more complex than people supposed. Though moral and political fictions were pleasures and pains, these could be asserted and classified in countless ways. The word 'justice', for example, Bentham often redefined in a Utilitarian way after Godwin's *Enquiry Concerning Political Justice* (1793) became standard reading for English radicals. It could be defined negatively or positively. Positively, it was 'regard for human happiness considered as promoted by observance of fixed rules, especially rules laid down by authority of government.'¹⁰⁴

But there was civil justice and penal justice. In civil law justice was adherence to the non-disappointment principle. That is, when a man had certain good things, justice required that he be permitted to continue enjoying them. Should public policy override his private interest, justice required that his suffering be minimal.

In penal law evil was presupposed and justice consisted of finding the proper remedy. It was not merely a question of punishment. That was the fourth and final remedy, to be administered only after all others had failed. First the law must offer preventive, suppressive, and satisfactory alternatives. In each case justice was different. Nor did Bentham's subtleties end here. The legislator must consider types of offenders as well as remedies. Were they guilty or not guilty? Should he temper justice with mercy?

Halévy remarked, 'In it Bentham is effectively seen pushing his hatred of the democratic theory of the original contract almost to the point of adhering to the despotic and theocratic theory of Sir Robert Filmer.' (p. 416, my translation). Bentham never pushed as hard as that.

In the same way Bentham carefully and patiently traced all the ramifications of his definitions. As we know, he defined 'liberty' generally as a branch of security, the first subordinate end of law. A more articulated definition waited upon facts: whose liberty was at issue? If a man loved his own liberty, his was a self-regarding affection, the love of power. If his love was general, it was a branch of sympathy, an other-regarding affection.

The Supreme Irony of Language.

Bentham was forced into a cruel dilemma. He was always well aware of it and never resolved it. Knowing must lead to doing; for its own sake, knowledge was worthless. He created a new science of morals and legislation solely to contribute to the greatest happiness of the greatest number. But the first conditions of effective science are precise language with new names for new distinctions, and exhaustive classification. 'Shall words be coined,' he asked, 'or shall . . . the growth of science be at a stand?'

On the other hand, the primary purpose of language is communication. The value of Bentham's new science depended on popular acceptance, on his ability to persuade people to modify their behaviour in Utilitarian ways. 'A man's first object,' he said, 'is naturally in point of duty to be serviceable, in point of interest to be acceptable to his own country.'¹⁰⁵ Yet the more distinctions he made, the more neologisms he coined, the sparser his audience became. Sensitive both to the heavy burden of emotive meaning borne by the conventional vocabulary of morals and politics and the average man's stubborn attachment to it, he admitted, 'Change the import of the old names, and you are in perpetual danger of being misunderstood: introduce an entire new set of names, and you are sure not to be understood at all.'¹⁰⁶ A perfected dictionary was 'a consummation . . . devoutly to be wished,' but Bentham did not expect to see it before 'how many centuries, not to say tens of centuries, must have passed away.'¹⁰⁷

Therefore, if he created a true science, he created in a vacuum, for he could persuade no one to use it. If he persuaded successfully, by speaking with conventional imprecision, he abandoned his ideal of a true science.

Bentham tried to escape from this impasse in two ways.

Neither was successful.* At first he tried to slip his neologisms in quietly, under cover of a brilliant, slashing, epigrammatic style. When he read Helvétius, his imagination spiralled at the possibilities of definition. Feverishly he planned new vocabularies for every area of human activity, faculty psychology as well as morals and politics. At some point in the 1770s he was overwhelmed by his vast ambitions. As he reluctantly put aside his unfinished Encyclopedical Tree and concentrated on legal analyses, so he left his psychological dictionary and returned to the language of law. He conceded:

We must submit to usage, and in great measure be content to take language as we find it: not attempt to make a new one: least [sic] we find none willing to be at these pains to understand it but ourselves.¹⁰⁸

But in many cases the old terms were inadequate. Bentham made hundreds of new distinctions and needed new names for them. Some few of these have been accepted: maximize, minimize, international, codify, eulogistic, dyslogistic. Most of them have not: maleficence, the kind of act proscribed as an offence; individuation, the process of distinguishing particular objects in law;¹⁰⁹ dispositive event, as the synonym for title in law; collative and ablative events, as the beginning and end of rights;¹¹⁰ filiality, the relation of child to parent; impossibilized; interessees, or interested parties; powers of contrectation and imperation, or powers of punishing and creating offences; and dozens of others.

One of his favourite neologisms was *Brithibernia*, a composite to

* Nor has anyone else succeeded. The cry for a reformed vocabulary of politics will probably echo unheeded down the last corridors of time. Recently, for example, T. D. Weldon has repeated the Benthamic warning against substantializations: his 'essentialist fallacies' are Bentham's political fictions. See *The Vocabulary of Politics* (London: Penguin Books, 1953), pp. 11-12.

George Orwell went further and pleaded for paraphrastic redefinition. 'One ought to recognize that the present political chaos is connected with the decay of language, and that one can probably bring about some improvement by starting at the verbal end. . . . Political language . . . is designed to make lies sound truthful and murder respectable, and to give an appearance of solidity to pure wind. One cannot change this all in a moment, but one can at least change one's own habits.' 'Politics and the English Language', *A Collection of Essays* (New York: Anchor Books, 1954), p. 177. This change of habits, Orwell suggested, might come about by thinking and speaking in terms of concrete objects rather than windy abstractions.

replace the separate names England, Scotland, and Ireland. He tried several times to persuade the government to adopt it, convinced that bad nomenclature leads to bad action. He hoped that all citizens of Great Britain might learn to identify themselves in the same way. When they did, he expected their fierce, long rampaging, separatist hatreds to lessen.

As his new vocabulary multiplied, Bentham's excitement mounted. He shared with Lavoisier the scientist's belief that languages are not only means of communication but 'real analytical systems by means of which we advance from the known to the unknown.'¹¹¹ Language, Bentham said, 'is an instrument not only of *discourse*, but of *thought* itself; an instrument by which not only are perceptions and ideas communicated, but ideas are formed.'¹¹²

What glorious creative Utilitarian possibilities were opened by a logic of the will! First, the complete distinction, classification, and relation of offences and punishments would make the absurdity of prosecution for private behaviour obvious, and Bentham hoped to see whole classes of non-social 'crimes', such as homosexuality, wiped from the statute book. But punishment was the last stage of law. What further opportunities were suggested by the classification of penal law as preventive, suppressive, and satisfactive; by an analysis of reward; by considering indirect as well as direct legislation! Until men gave names to functions they could not discuss them, and so the possible areas of state intervention were as limitless as the ingenuity of neologists.

The state of language marks the progress of ideas. Time out of mind, the military department has had a name: so has that of justice: the power which occupies itself in preventing mischief, not till lately, and that but a loose one, the police; for the power . . . of positive good, no peculiar name . . . seems yet to have been devised.¹¹³

Bentham offered an awkward example, the further division of police powers into phthano-parenomic, or crime prevention; and phthano-symphoric, or calamity prevention. He asked, 'Who would have endured . . . to have seen two such words?'¹¹⁴

He then extended the range of offences by classifying acts against positive increases in national well-being, that is, against education, the poor, the sick, the insane, and gave them all

similar jaw-cracking Greek names. Though he knew that men would laugh at his locutions and ignore them, he saw no alternative. For certainly it was better to coin a new name for a new distinction than to explain it in a long sentence. He justified Greek roots by the common ignorance of them. Had he used English ones, they might be ambiguous through previous association. His solicitude was needless, for his prophecy was correct: he was laughed at and ignored.

Ironically, the more aware of popular resistance to neologisms Bentham became, the less could he resist them. His earliest *Preparatory Principles* were light and unadorned; the 1780 *The Principles of Morals* was here and there weighed down with ponderous new words; but by 1782 *The Limits of Jurisprudence Defined* fairly sank beneath them.

Lord Shelburne, who first called at Bentham's Lincoln's Inn chambers in 1781, was eager to help him but at a loss to know how. Shelburne borrowed the manuscripts of *The Principles* and *The Limits*, read them aloud to his family at tea, passed them around among such friends and clients as Dunning and Lord Camden; but neither he nor they could understand them. As Bentham told the Abbé Morellet in 1789, 'It was all Arabick to L^d Lansdowne and L^d Camden.'¹¹⁵

Bentham's mixture of analysis and persuasion, profundity and propaganda, was completely unpalatable. How could he prompt men to swallow them? Conceivably he might have abandoned analysis, but in fact it was impossible. Analysis, classification, and verbal invention were his deep and uncontrollable passions. He could not have conquered them had he wanted to. Nor did he want to. He tried another approach instead.

He separated the mixture, and from 1782 on rarely again offered his bitter difficult analyses to the public. He published less harsh occasional pieces about current problems, purposely written in emotive rather than neutral language. In the new 1789 Introduction to *The Principles of Morals*, Bentham admitted that his philosophy had long since been divided in two, that he had hidden the profound half, and that he might:

find himself in the condition of those philosophers of antiquity, who are represented as having held two bodies of doctrine, a popular and an occult one: but, with this difference, that in his instance the occult

and the popular will, he hopes, be found as consistent as in those they were contradictory; and that in his production whatever there is of occultness has been the pure result of sad necessity, and in no respect of choice.¹¹⁶

From 1782 to about 1806 he hid some of his analyses so thoroughly that he almost forgot about them himself. But then, probably stimulated by writing *The Rationale of Judicial Evidence*, his sleeping passion awakened. It seized and dominated him for the rest of his life. Remembering his earlier failure, he indulged it wildly but secretly. This was the era of archetypation and phraseoplerosis; noology, thelematology, nomography, deography and pothography; of *Chrestomathia* and the Encyclopedical Tree with its coenosopic and idioscopic eudaemonics and its somatoscopic and pneumatoscopic idioscopic ontology. Surely this was a unique if appalling *tour de force* of sustained verbal invention.*

During this same era, as we know, Bentham's passion drove him from the particular vocabulary of morals and politics to the most general problems of 'universal grammar'. He made tentative excursions into areas now cultivated by contemporary symbolic logicians. He was, for example, disturbed by the ambiguity of the disjunctive 'or' and proposed 'or say' or 'alias' for its non-exclusive sense.¹¹⁷ Perhaps the most provocative and relevant of his concerns was the problem of synonymy. He doubted that there were true synonyms. 'Take any two . . . [words];' he said, 'by neither, perhaps, is exactly the same idea expressed as is expressed by the other.'¹¹⁸ He suggested the generic name 'equivalence' for all classes from terms to propositions, and in this way related grammar and his analyses of offences and punishments in penal law.

'equivalences' – this is a term of . . . great value: for synonymes are only a particular exemplification of equivalences; namely between term and term: but equivalences may not only be between term and term but between proposition and proposition. There are 3 modes of equivalences: as between term and term (this is indication of mutually synonymous terms); between term and proposition (this is what is called definition); between proposition and proposition (this is what is called exposition).¹¹⁹

* See Appendix A below, p. 446, for a simplified version of the Tree.

The arcane and popular split in Bentham's philosophy had an unfortunate effect on his style. Applied to language, as we have seen, Utilitarian criteria were æsthetic. They were characterized by 'noble simplicity'. It was another irony that this canon underlay Bentham's notorious, complex, later style. According to Hazlitt, he spoke 'a language of his own that darkens knowledge.' His crudities overwhelmed Augustine Birrell. 'I felt,' he said, 'as though I had been asked to masticate an ichthyosaurus.'¹²⁰ Harold Laski added:

If Bentham had possessed Hume's exquisite style, instead of his own barbarous system of convolutions, political science would have been fifty years ahead of its present position.¹²¹

The source of Bentham's ponderosities was a quixotic attempt to force his style as well as doctrines into a logic of the will. As laws were expressions of class logic, so was there a class logic of legal meta-language. In his 'minimum vocabulary', a few verbs and principles would act as 'functions', or conceptual shorthand for entire classes of acts or things. Each proposition that speaks in terms of 'functions', Bentham said:

is the equivalent of a multitude of propositions of unknown length and very variable and varying tenor . . . [which] would have exhibited no feature of determinate and apprehensible resemblance one to another.¹²²

Verbs were his particular bugbears because they were the parts of speech most remote from paraphrasis. Because nouns either directly or indirectly represent concrete images, Bentham's late style was governed by the 'substantive-preferring principle'.

Substantives are the only real entities: situations, motions are imaginary entities. If we speak of them we are obliged to speak of them as if they were substantives.¹²³

In order to minimize the necessary evil of fictions, Bentham began to eliminate all but a few basic auxiliary verbs like 'give' and 'take' from his later esoteric writings.*

* It is perhaps not surprising that these auxiliaries served the same purposes as C. K. Ogden's 'operators' in Basic English.

Therefore he preferred to say 'to give extension' or 'to give denomination to' rather than 'to extend' or 'to denominate'. For a noun can become the subject-matter of consideration, attention, examination, and prediction.

Where a substantive is employed, the idea is stationed as it were upon a rock: — where no substantive is employed, but only a verb, the idea is . . . a twig or a leaf floating on a stream, and hurried down out of view along with it. When you have said, 'I will give extension or elevation to an object in question,' I can take up . . . and give to them . . . whatever consideration . . . [they appear] to require: but if what you have said be, 'I will extend the object,' there is no extension, no elevation, nothing I can take up or lay hold of.¹²⁴

Also in keeping with his logic, Bentham began to insist that all sentences should have the same structure, beginning with expressions of will in volitional ones and principal objects in other kinds. Each sentence should contain only one leading idea, placed as close to the beginning as possible, and immediately followed by its qualifying and exceptive clauses. The same words should be used for the same ideas throughout. Repetition was useful in complex sentences for reviving and strengthening impressions.¹²⁵ Another of his principles was conjugate-preference. For many years he resisted renaming the principle of utility, though well aware of its ambiguity, because 'utility' had so many functional conjugates like utilize and Utilitarian. The 'greatest happiness' had none.

Here is a typical example of Bentham's late style which sets every critic's teeth on edge.

Constantly proper end of action on the part of every individual considered as trustee for the community, of which he is considered as a member, the greatest happiness of that same community, in so far as depends upon the interest which forms the bond of union between its members.¹²⁶

No less than the rest of his system, Bentham's later style evolved from his dissatisfactions with English laws. They were drawn up in such unintelligible circumlocutions that the legislator's statement of will was lost in the verbiage. Bentham set out to substitute clear and simple expressions of will.*

* For his new rules of composition, see VIII, 'Essay on Language', and III, 'Nomography'.

Unfortunately the effect of these 'improvements' was the opposite of his intentions. He aimed at 'decorability', 'force' and 'harmony'; his results were ugly, complex, and boring. His canon of 'noble simplicity' was unexceptionable, but as J. B. S. Haldane has said, 'The catch in this criterion lies in the word "simplest"'. It is really an æsthetic canon such as we find implicit in our criticisms of poetry or painting.¹²⁷ In this part of his system Bentham's æsthetic judgment went awry.

All the same, the critics have as usual over-simplified. They see two styles, an early and a late. The early, they admit, was spirited, witty, and colourful; the late, they regret, was a Germanic mouthful of hard unacceptable neologisms in tortuous, unending sentences. In fact Bentham had at least four styles: an early and a late popular and arcane. Some of his early writings like *The Limits* are difficult; some of his later writings are as buoyant and slashing as *A Fragment*. It depended on his audience. Was he writing a broadcast polemic or a reasoned piece of persuasion for a few people only? Was he trying to make an exhaustive analysis or an emotional appeal?

Within the limits of his particular ambitions Bentham was a truly ingenious stylist. Few of his political writings have been published, but they are all popular and easy. Their style is also varied. Sometimes he wrote straight exposition; at other times he wrote dialogue.

In 1816 and 1817 he wrote an unpublished four-hundred page work, *Necessity Catechism, or Constitutional Catechism*, in simple question and answer form. In 1819 he prepared a preliminary sketch for a parliamentary reform bill as a dialogue between a Reformist and an Anti-reformist. He also followed Cobbett's example in addressing long open letters to members of the government, for example, the Duke of Portland and Lord Erskine.*

This does not, however, alter the fact that Bentham never resolved his linguistic dilemma. His early writings were all analyses: he called *The Principles of Morals* an 'analytical outline' merely.¹²⁸ When it became painfully obvious that he would find no audience for his exhaustive studies, he evolved a dual philosophy and perforce abandoned his scientific ideal. The

* These have never been published. Cobbett's *Register* was often issued this way as non-taxable pamphlets because newspapers were heavily taxed. See Elie Halévy, *The Liberal Awakening* (London: Ernest Benn Ltd., 1949), p. 71.

supreme irony is that those who scorn his 'science of morals and legislation' are justified – for entirely the wrong reasons. They condemn it for inadequacies in the middle levels of his system; in fact, it failed at the very beginning. They criticize the content of his thought, but in Bentham's new science, content belonged to the third and fourth requirements. The first and second requirements, after the unsupported announcement of the greatest happiness principle, were formal: a new dictionary and a new grammar, necessary elements of a logic of the will.

This misconception has led to another. A persistent myth is that Bentham's ideas never changed. It is a common assumption that everything he had to say is in *The Principles of Morals*. It is true that almost all his ideas lie sleeping in or scattered through the footnotes of *A Fragment* or *The Principles*. They are there, however, as the words of a poet are in a dictionary. They are bare definitions: the poet gives them structure and passion.

Bentham's system was given structure and passion by his vision of an Encyclopedical Tree, a chart of all human thought and action that related everything to pleasures and pains – the trivial and exalted, butterfly-chasing, pushpin, entomology, astrology, chemistry, mathematics, physics, and all of ethics and law. Nothing escaped him and failed to find a place in his analytic outline. Nothing, therefore, that he developed and expanded then or later could have been altogether new. It would already have been accounted for in the Tree.

Thus it is true that the form of his thought changed relatively little. He generally offered more of the same – more neologisms, more exhaustive analyses, further articulations of early hints.

But the content changed a great deal. He began to consider his definitions not merely as the products of analysis but instruments of popular polemic as well. If his analyses of what ought to be remained fairly fixed, his understanding of what is was radically revised. As his range of experience widened, he became a subtle psychologist, ever more aware that people clothe their shabbiest motives in luxurious eulogisms. How did the content of Bentham's thought develop and change? The next chapter will give part of the answer.

It is still another irony that while Bentham's critics berate him for the static content of his thought, when in fact it continually evolved, they are at the same time unaware of the crucial role of his definitions and logic, and these changed little.

The logic of the will is fundamental. What follows from focusing on it? Law and politics, not psychology and ethics, are the key disciplines; and his key definitions were security, possession, power, offence, right, obligation and sovereignty, and not good, bad, vice and virtue. Even war, for example, he considered 'as a species of procedure. . . . It is a writ by which execution is made upon a whole people. The attacking sovereign is the plaintiff; the sovereign attacked is the defendant.'¹²⁹ Morals were the work of law, for the legislator was the ultimate lexicographer who defined the subordinate vocabulary of ethics as well as politics. Bentham's primary quest was a search for certainty, for fixing the relations between social groups, and not for a *summum bonum* or a primitive hedonism.

Karl Mannheim concluded that a science of morals and politics would be possible only when man shall make the formal structure of his thought 'independent of the different forms of conduct being studied'.¹³⁰ It was Bentham's genius to have understood this and therefore to have created a logic of the will. He failed nobly through no fault of his own.

Seen from this new perspective, Bentham's descriptive psychology and ethics shrink in importance and take a modest place as third requirements of his new science: detailed evidence.

CHAPTER 4

¹ B. 127, p. 3.

² III, 270-1, 'Nomography'.

³ *Ibid.*

⁴ B. 69, p. 177, *Preparatory Principles*.

⁵ *Ibid.*, p. 155.

⁶ B. 27, p. 161.

⁷ *Ibid.*

⁸ III, 271, note.

⁹ B. 27, p. 166, 1778.

¹⁰ II, 297, 1796.

- 11 B. 27, p. 157, 'Prefat to Bern Prize Code', 1779.
- 12 III, 251, 'Nomography'.
- 13 VI, 226.
- 14 B. 27, p. 139.
- 15 VI, 217; see also VIII, 197ff.
- 16 VIII, 199.
- 17 I, 293, note.
- 18 *Ibid.*
- 19 VIII, 246ff., and also *Theory of Fictions*, *op. cit.*
- 20 B. 102, p. 78, 1814. See also VIII, 247.
- 21 VIII, 197. See also VIII, 325.
- 22 VIII, 515.
- 23 See, for example, Benjamin Lee Whorf, *Language, Thought, and Reality* (Cambridge, Mass.: Technology Press, 1956).
- 24 B. 102, pp. 275-9. See also VIII, 321ff.
- 25 VIII, 508.
- 26 I, i, Preface. See also Jeremy Bentham, *An Introduction to the Principles of Morals and Legislation* (New York: Hafner Publishing Co., 1948), Introduction, iii.
- 27 X, 145, 1785.
- 28 Hafner edition, p. 329.
- 29 *Limits of Jurisprudence*, *op. cit.*, pp. 293-4.
- 30 III, 234. 31 III, 277.
- 32 I, iv, Preface.
- 33 *Ibid.*
- 34 A. M. 33551, p. 14, to Mora, 19 September 1820.
- 35 VIII, 120.
- 36 *Ibid.*
- 37 See James R. Newman, *The World of Mathematics* (New York: Simon and Schuster, 1956), I, 390, and Bertrand Russell, *Human Knowledge* (New York: Simon and Schuster, 1948), pp. 242ff.
- 38 III, 209. 39 VI, 217.
- 40 B. 27, p. 45, *ca.* 1773-5.
- 41 A. M. 33549, p. 28. See also VIII, 330.
- 42 B. 69, p. 70, *Preparatory Principles*.
- 43 VI, 216-7. 44 VIII, 329. 45 III, 159.
- 46 *A Treatise of Human Nature*, ed. L. A. Selby-Bigge (Oxford: Oxford University Press, 1949), p. 415.
- 47 X, 511. 48 X, 519, 1820. 49 IX, 110.

- 50 *Leviathan* (Oxford: Clarendon Press, 1909), p. 46.
- 51 I, 209, *Table of the Springs of Action*.
- 52 IX, 46, 48, *Constitutional Code*.
- 53 X, 561. See Appendix C.
- 54 B. 169, pp. 10–11, *Preparatory Principles*. See also Halévy, *La Formation*, I, 298, who, after quoting this passage from Bentham, asserted the opposite.
- 55 I, 151; Hafner, p. 330.
- 56 *The Limits of Jurisprudence, op. cit.*, p. 88.
- 57 *Ibid.*, pp. 175–6.
- 58 Jeremy Bentham, *The Theory of Legislation*, ed. C. K. Ogden (London: Routledge and Kegan Paul, 1950), p. 358.
- 59 VI, 205; II, 5, 6.
- 60 B. 97, pp. 1–116.
- 61 *The Limits, op. cit.*, p. 340.
- 62 *Ibid.*
- 63 III, 204.
- 64 B. 169, p. 141, unsent. See pp. 375–6 below.
- 65 III, 193. 66 III, 211. 67 VIII, 525. 68 III, 160.
- 69 *The Theory of Legislation, op. cit.*, p. 111.
- 70 III, 188–9. 71 VIII, 530. 72 III, 159.
- 73 *Ibid.*
- 74 II, 37. 75 II, 200. 76 III, 196. 77 III, 197.
- 78 B. 69, p. 159, *Preparatory Principles*.
- 79 III, 200.
- 80 *Ibid.*
- 81 *The Principles of Morals*, Chapter IV.
- 82 *The Theory of Legislation, op. cit.*, pp. 48ff.
- 83 II, 133. 84 III, 197.
- 85 II, 287, 1820, 'Liberty of the Press and Public Discussion'.
- 86 III, 229. 87 III, 281.
- 88 III, 283. See also V, *Petition for Justice* and *Elements of the Art of Packing*; and II, *Principles of Judicial Procedure*, especially Chapter XXIII.
- 89 II, *Anarchical Fallacies*.
- 90 B. 146, p. 237, 30 June 1801.
- 91 *Ibid.*
- 92 III, 220.
- 93 B. 170, p. 175.
- 94 Laski, *Political Thought, op. cit.*, pp. 131ff. Bentham later shared some of his ideas, such as government-as-trust and popular sovereignty, arrived at of course by a Utilitarian rationale.

- 95 B. 149, p. 332, 1790s.
 96 Loose sheet entitled 'Answer to Declaration'.
 97 B. 100, p. 5, *ca.* 1785.
 98 B. 170, p. 178, *ca.* 1793.
 99 B. 69, p. 51, *Preparatory Principles*.
 100 *Ibid.*, p. 102.
 101 *Ibid.*, p. 71.
 102 I, 8; and Hafner, p. 17.
 103 B. 100, pp. 107-13.
 104 B. 106, p. 397, 'On the Supposed Love of Justice', 1829.
 105 B. 27, p. 412, 1770's Preface.
 106 I, 97, note; Hafner, p. 205, note.
 107 VIII, 106-7.
 108 B. 69, pp. 70-1.
 109 III, 177. 110 III, 186-9.
 111 Douglas McKie, *Antoine Lavoisier* (New York, 1952), p. 199.
 112 VIII, 231.
 113 I, 102, note, *The Principles of Morals*.
 114 *Ibid.*
 115 B. 169, p. 165.
 116 I, iii, Preface; Hafner, pp. xxvii-xxviii.
 117 VIII, 84-5. 118 VIII, 314.
 119 B. 149, p. 254, after 1826.
 120 *Holmes-Laski Letters, op. cit.*, II, 1268.
 121 *Ibid.*, II, 639.
 122 III, 268.
 123 B. 149, p. 254.
 124 III, 267. See also X, 569, and I, 8.
 125 VIII, 315.
 126 I, 8, 1827, Burton's Introduction.
 127 Newman, *op. cit.*, III, p. 1787.
 128 I, 111, note.
 129 III, 200.
 130 *Ideology and Utopia* (New York: Harcourt, Brace and Co.), p. 117.

The Principle of Utility

Psychology and Ethics

*'What is the pulse of this so busy world?
The love of pleasure. . . .'*

EDWARD YOUNG

What Is: Assumptions and Facts.

In 1791 Bentham set up a scale model of Panopticon prison on his dining-room table and invited the public to inspect it. One of his guests was Edmund Burke, who looked sceptically at the wheel-like building with the manager's office at the hub and rows of cells as spokes and said, 'Yes! there's the keeper, – the spider in his web.'¹ In the same way, the principle of utility sits at the centre of Bentham's thought, all-inclusive and all-controlling. The system was teleological and the greatest happiness of the greatest number was its single grand purpose. It was also Bentham's single initial axiom, the one extra-empirical assumption underlying the conditions or means of his new science. Everything in the system depended upon it: his new dictionary, paraphrasis, theory of fictions, logic of the will, fallacies as well as substantive and adjective branches, psychology, ethics, all that is and ought to be.

With vigorous confidence he announced in 1782:

Those who cry out against pleasure, as such, know not what it is they say. Upon . . . [the principle of utility] the most sordid pleasure which the vilest malefactor ever reaped from his crime (suppose it but pleasure) would not be to be reprobated, *if it stood alone*. This [is an] impregnable truth. . . .

This then I assume as a *postulatum*: and this, in matter of censure and approbation, is the only *postulatum* I do assume. . . . For matter of fact I appeal to the experience or observation of those in whose cognizance it lies. For matter of censure or approbation I appeal

solely to this principle. The merit of discovering it is none of mine. . . . I had it from Epicurus, from Carneades, from Horace, from Helvetius, from Beccaria. . . .

If it be denied me, I confess I shall be altogether at a loss to prove it . . . nor shall I easily be brought to think it necessary.²

Though he neither could nor cared to offer a speculative proof, Bentham was greatly concerned to give practical reasons. The only hypothetical question that interested him was whether any moral sentiment:

can properly be justified on any other ground [than utility], by a person addressing himself to the community. . . . It is a question of practice: the decision of it is of as much importance as that of any can be.³

Thus he bridged the gap between the *is* and the *ought*. The justification of his prescriptive greatest happiness principle was always ultimately factual.

If utility was his one extra-empirical postulate, he also made two fundamental empirical assumptions. Even before he described the facts of human nature and social behaviour that he offered as reasons for the principle, he flatly posited the existence of a material world. In an early essay, 'What Things Exist', he said:

I assume and take for granted, that among the objects or supposed objects that offer or are supposed to offer themselves to our senses, are some that actually exist.

I assume in a word the existence of what is called the material world . . . and that without scruple: notwithstanding it has been the subject of so much controversy. I assume it boldly for this reason: because in point of practice, no bad consequences can as everyone is ready to acknowledge possibly arise from supposing it to be true, and the worst consequences can not but arise from supposing it to be false. . . .

If that which I take to be bread, and which I seem to myself to have in my hand does not exist, it is nothing: there is nothing in my hand. To put nothing into my mouth is certainly not the way for me to feed myself. But if there is nothing for me to eat it is to no purpose to make any attempt at eating. If I make no practical inference from this fine philosophy, I am never the better for it. If I make any from it, I starve.⁴

This assumption followed from Bentham's complete pre-occupation with practice. To prove the existence of a material world Dr Johnson kicked a stone. Bentham simply posited it, for to him existence was obviously a pragmatic necessity.

If Bentham's first set of facts was ontological, his second was historical. It was a description of man in the state of nature. He drew his picture not from history, which must have been conjectural, but from analogies with animals, primitive tribesmen, and babies. His test of civilization was the same as Hume's: radius of reference. The barbarian acts blindly without foresight; he is unable to sacrifice lesser present good to greater future happiness. Since security is the first subordinate end of government, man in the state of nature is insecure. Thus Bentham's ethical vocabulary was a part of his logic, for he defined 'virtue' as foresight. A man was virtuous in proportion to the range of considerations that prompted his actions. Virtues were either self-regarding or other-regarding; prudence, the judicious exercise of foresight in one's own affairs, or benevolence, the widest extension of sympathy for other human beings.

Men are born animals, without prevision.

In the case of the inferior animals the idea of the happiness of the present moment . . . occupies . . . the whole of the mind . . . the present thus operating to the exclusion of the future. In the case of most men [this] . . . exclusion . . . is produced by bodily affliction, when raised to . . . torture. . . . The greater the degree of affective force or influence with which the future operates in . . . [men's] mind in comparison of the present, the wider . . . is the distance between . . . [his] state of mind . . . and the state of mind of an inferior animal.⁵

The condition of a savage is little better than animal, and an underfed underpaid labourer shares it.

Take man in his original state . . . called the savage . . . in which in so many parts of the planet it is still visible.

In this state scarce a trace of sympathetic affection is visible. . . . His time is divided between pursuit of food, enjoyment of means, and reckless apathy. At which of these three times should sympathetic affection find place in his breast? – while he is tortured by hunger, while he is . . . gorging himself, or while he is buried in sleep, or in indolence scarce distinguishable from sleep?

Even in the most polished state, in every country, except where political liberty and land in plenty afford a surplus of time after provision made for indispensable wants, the condition of the great majority is, though not in so high a degree, the same in this respect as that of the savage. Demand for self-regard urgent and continual, room for social regard, though not absolutely non-existent, still at best more or less scanty.⁶

Like animals and savages children are collections of appetites, blind to everything but their own immediate imperious wants. The mischief they do is real but aimless and uncalculating. Bentham remembered with remorse how he had once popped live bugs in candle-flames. But as children grow, the area of their interests widens and has no limits but the universe itself.

As age and experience advance . . . [the affection of sympathy] receives additional force and efficiency. It extends its influence . . . beginning with the small immediate relations where the ties of consanguinity, affinity, domestic contract or friendly intercourse are strongest, and advancing with experience and mental culture into a widening field of action. Its links become multifarious, and capable of great extension. They spread into divers circles – domestic, social, professional, civic, provincial, national. . . .⁷

These late sketches of the state of nature are the most detailed that Bentham drew, but he had always had the same vision of it and it had had powerful practical implications for Utilitarianism. It was first of all his rationale for the supremacy of law as the guarantor of foresight. Other men made unhistorical claims of past existence for their states of nature. Bentham's originality and superiority lay in this, that he saw the state of nature as a psychological and sociological condition with living examples everywhere. Indeed, he thought that on every social and economic level most men were still in it.

A central question of the Utilitarian system was, who are the savages and how may they be civilized? Bentham's final comprehensive solution was a welfare state. When men in power act as they ought to do, they will oversee universal education, defined as ever-expanding moral and intellectual imagination.*

* So Bertrand Russell also defines education, *Mysticism and Logic* (New York: Longmans, Green, 1925), pp. 37–8.

Thus children shall all be encouraged to leave the state of nature. Government will guarantee job security and minimum wages, freeing the labourer from his involuntary barbarism.

Far-fetched as a great deal of anti-Bentham commentary is, it rises to sublime irrelevance here. What is 'the interest-philosophy of the Bentham school?'⁸ It is surely not Benthamic. 'Egoistic hedonism', 'selfish', 'self-interested', '*laissez faire*', 'individualism': to what doctrines do these pejoratives apply? Certainly not to the Utilitarian one. The exclusive purpose of Bentham's factual descriptions was to point the way for his prescriptions. If he drew the savage in any of his shapes as blindly self-preoccupied, his object was to help this primitive to see, to open his imagination, to teach him sympathy, benevolence, and tolerance. One of Bentham's grand visions was an expanding universe of moral imagination.

'Indirect' or 'transcendental' legislation was this future science of an endless variety of civilizing tasks government might undertake when Utilitarian prescriptions became facts. It is a grave misfortune that this large, original, exciting area of Bentham's thought should be unpublished and unknown,* for it is one of the critics' excuses for error.

What Is: The Implied Psychology of Law.

The third important set of facts underlying Bentham's principle of utility was direct and personal. As he sat for years in the Court of King's Bench, he observed thousands of examples of uncivilized behaviour and he drew his own conclusions. On both levels, descriptive and normative, Bentham's early psychology and his ethics were generalizations from his experience in the grim and primitive world of law. As he grew older his universe expanded beyond the law and he changed and developed the content of his thought accordingly.

Who ought to be the most civilized of all men? The legislator, for he is the shepherd of the whole human flock. Who was in fact

* Except for the few pages in *The Theory of Legislation* referred to above. These were translated from Dumont's *Traité*s and that charming selfless Genevan well knew their value in overthrowing the stock crudities about Bentham. In 1829 he said, 'Egotism and materialism! How absurd! Nothing but vile declamation and insipid mummery! . . . His admirable "Treatise upon . . . Indirect Means" . . . [is] sufficient to pulverize all these miserable objections.' (XI, 24).

the master barbarian, sunk deeper in the state of nature than anyone else? The legislator. It took Bentham many weary years to arrive at this painful conclusion. When he did at last, he became a democrat. Because the legislator refused either to lead or to be led from his self-centred morass to the higher slopes of benevolence, Bentham asked the masses of men to lead themselves to new heights, to become their own moralists and legislators.

What is the principle of utility? On its highest level, it is the Golden Rule for legislators. In *A Fragment on Government* Bentham said:

I learnt to see that utility was the test and measure of all virtue; of loyalty as much as any: and that the obligation to minister to general happiness was an obligation paramount to and inclusive of every other.⁹

It is not an ethical theory, but a kind of Decalogue-in-one for a new Moses. It gave him an overall standard and a series of prudential rules to direct his judgments. This is fundamental.

For even after Bentham changed his audience from rulers to the people his psychology and ethics were still a legislator's psychology and ethics, purposely designed as better alternatives to the uninspected and irrational values of English law. He offered them modestly as useful working tools, in the spirit of his jingle:

If a better system's thine,
Impart it freely or make use of mine.¹⁰

There is virtue in his deliberate parochialism. He spoke to eighteenth-century Englishmen in their terms, to legislators and judges who must, when presented with limited evidence, decide between alternative courses of action. His aim was modest: to persuade certain men to act in certain ways. He watched judges at work and was dissatisfied. This is a key fact. It shaped his characteristic doctrines: his dismissal of motives in ethical judgments, his emphasis on the dangers of emotive meaning, his use of sanctions in promoting mass moral improvement, and the calculus of pleasures and pains.

This opens the possibility of a fair hearing for his thought and shuts off much of the easy denigration heaped upon it by those

who see it out of context. In judging Bentham the first question is not: what are his naïvetés and shortcomings, compared with modern subtleties of psychological and ethical analysis? It is rather this: was his work an improvement over the customary values and assumptions it was designed to replace?

Taken alone, the principle of utility is empty and has no utility, for it is too general to be applied to practice. Its value depends altogether on its middle-level 'laws' or subordinate principles. Their value in turn must be measured against the primitive psychological and ethical assumptions buried in English law. If Bentham's motto was, no criticism without construction, the motto of his critics should be, no criticism without understanding his criticism.

What kind of implied psychology and ethics, then, underlay English law? The psychology of English jurisprudence was, Bentham thought, absurdly reductionist. Money and the love of property were the only motives it recognized, and money the only remedy for evil. He disliked:

the prodigious importance attached by so many to the term *property*: as if the value of it were intrinsic, and nothing else had any value: as if man were made for property, not property for man. Many, indeed, have gravely asserted, that the maintenance of property was the only end of government.¹¹

Again and again he condemned the crudity of English law. The love of money 'is the only species of interest which the man of law, at least the English, recognizes under that name. *Good*, he knows of none but money: *evil*, he knows of none but the want of money.'¹²

Bentham's charges were borne out by the facts. We saw that under the fee system, justice was the prerogative of the rich; that there was a great increase in death penalties for such trivial offences as stealing turnips and damaging fishponds; and that sixty-three out of sixty-four executions in 1785 were for offences against property.

He did not claim that this preoccupation with money was a special aristocratic class interest. It was a fixed part of the national *mores*, and he held that:

John Bull, the representative of this most enlightened of all publics – is a person somewhat hard of hearing, and unless by the chink of

money, and that a good round sum – the irascible part of his frame is not easily put into a ferment.¹³

Bentham's point was that the Englishman is deaf because the law has made him so. The legislator is sovereign not only of law proper but of psychology and ethics.

Moreover, he admitted that he had long been somewhat hard of hearing himself. While his father lived, Bentham was an involuntary victim. It was not only that Jeremiah Bentham was a typical John Bull who lectured continually on money-morality, but that Bentham's imagination was perforce limited by his own narrow income. After he became wealthy in 1792, he changed his opinions. He took a new much broader interest in psychological motivation and became a practising sociologist who tried to reconcile his new insights and the principle of utility. The result was an important subordinate principle, 'Official aptitude maximized, expense minimized.'¹⁴

Bentham called on legislators to become profound psychologists, to recognize the endless variety of human motives, and to use them in the interest of good government. He believed that the thesis of money as the measure of all things ruined public morals and led to wholesale political waste and corruption. If men are in fact motivated by many other interests, by love of reputation, power, dignity, why not use these systematically as rewards for government service? If officials can be persuaded to serve for little or no money, need they also be paid?

Another of the innumerable ironies that pursue Bentham is the false antithesis often set up between Edmund Burke and him. Burke, the subtle psychologist with profound appreciation of the complexity and tragedy of the human situation, is contrasted with Bentham, the shallow hedonist whose superficial doctrine of 'self-interest' made a travesty of psychological analysis. Yet this charge of superficiality is the one that Bentham threw at Burke. For Burke not only accepted the conventional money-morality, he elevated it with oratorical ruffles and flourishes to a grand political principle. In his famous Economy Bill Speech of 1780, he laid down principles of financial reform which presupposed that men will serve only for money. His first principle was that only those corruptions should be abolished that were not outweighed by other political advantages.¹⁵

Bentham's contempt for Burke's sophistries was unremitting,

and refuting him was an urgent mission for at least two reasons. Through his magical oratory, Burke was the champion sower of fallacies of confusion. He was therefore one of the greatest enemies of the logic of the will. By trumpeting emotive language, he silenced Bentham's efforts to neutralize the vocabulary of morals and politics. Since his death in 1797 he had also joined Blackstone as one of the minor gods in the British political pantheon, and it was already almost sacrilegious to criticize him.

Another example of the law's psychological blindness was sex. According to Bentham, it was one of the strongest human passions. 'What the force of steam is in the physical world,' he said, 'the force of love is in the psychological – capable, when under pressure, of opposing the strongest force.'¹⁶ It would, he continued:

be a sad oversight, if . . . its influence were to be overlooked. It is completely so by English law . . . this passion is capable of rising beyond any height to which pecuniary interest has ever been known to arise.¹⁷

From first to last, pleas for sexual freedom ran through Bentham's writings. As soon as he began to classify offences, he was struck by the brutality of English law towards sexual deviation. By his rule, evil was measured by the number of people affected: mischief of the first, second, and third orders. It was unutilitarian to punish sexual 'offences', for they usually took place in private and had no public consequences.

Nor was Bentham content with legal analysis. In his role of popular sociologist, he offered schemes for freer sexual relations. A tyranny of hypocrisy ruled talk about sex, and he wanted to overthrow it. If sex was a strong natural pleasure, it was good and should rather be encouraged than condemned. With his usual resourcefulness, he joined several of his ideas together.

When the pauper problem became critical in the 1790s, Bentham suggested a complete reform of the antiquated Elizabethan Poor Laws. Taking his Panopticon as a starting-point, he drafted thousands of pages of plans for a national network of self-sufficient houses of industry, complete with farms and workshops. All who were unable to care for themselves would be welcome – the unemployed, aged, ill, crippled, orphaned, unmarried mothers, and neglected and abandoned

children. Here was the principle of utility in practice, and he rejoiced to imagine thriving houses of industry filled with happy busy people.

His ideas on sex were fitted into the plans. One of the ways he hoped to make his charges happy was by encouraging early marriages. Since these houses were to be self-supporting, his paupers and orphans had no need to wait for marriage settlements as members of the middle and upper classes then did. Thus, he dreamed, they might be happier than kings.

Between 1814 and 1816 Bentham wrote about two hundred pages of sexual analysis for two uncompleted works, *Code Penal* and *Sex*.*

Finally, in 1831, struck with intimations of mortality, he hurriedly transcribed his last thoughts on suicide and sex in a curious fragment, 'J. B.'s Instruction for Living Happily or Not At All'.

By having written what follows I have relieved my mind from . . . an anxiety. . . . My fear was – lest by dying . . . my fellow men . . . should be deprived of the happiness which it is my hope thereby to give them.

To be happy or not to be at all: such is the option which Nature has given to every human being: . . .

But to the taking the benefit of the option . . . two conditions . . . are necessary. 1. That . . . he should be exempt from those horrors – from those pains of mind . . . infused . . . by the opium of the existence of man in a life to come. 2. That in regard to pleasures, he should not . . . be debarred from . . . reaping . . . any pleasure which he exercises without producing thereby pain to a preponderant amount . . . either in his own person or the person of any other. . . .

A notion still extensively prevalent . . . in England is that by which man . . . stands disbarred from . . . reaping, otherwise than in a particular manner, the pleasure of the sexual appetite. Full of inconsistency is this notion. It begins with an all-comprehensive interdiction of pleasure from this source. But supposing that interdiction universally . . . [adhered] to, there would be . . . an end of the human race.¹⁸

Unfortunately for Bentham's reputation as a psychologist, his

* For samples of Bentham's writings on sex, see C. K. Ogden, *Jeremy Bentham, 1732–2032* (London: Psyche Miniatures, 1932), pp. 94–105. The remaining several hundred pages are still unpublished.

most profound and illuminating descriptions are buried among his legal analyses. They are hidden in *The Rationale of Judicial Evidence* under such headings as 'Instructions to be delivered from the legislator to the judge for the estimation of the probative force of evidence.'¹⁹ Who reads *The Rationale*? His critics do not. They leave it for the legal antiquarian, who probably knows little about psychology.

In *The Rationale* Bentham offered a carefully articulated alternative to still another of the law's psychological crudities. In English jurisprudence the only question about evidence was, yes or no? Is it or is it not admissible? Once admitted, all evidence was considered equally valuable.

Bentham's view was different. All evidence, regardless of *prima facie* unreliability, should be admitted. It should then be the judge's role to estimate the value of different kinds. The considerations that Bentham suggested he keep in mind were rather sophisticated: unconscious motives, class bias, the natural tendency to forget evil and remember good, as well as sexual passion. Inevitably in the course of experience and in proportion to his perception, the judge will have evolved an efficient calculus. It is in this context as legislative and judicial rules of thumb that the calculus becomes meaningful in Bentham's system.

At the same time the judge must be a working moralist, continually encouraging his charges to widen their horizons of sympathy. He ought to be a new Moses, but what was he in fact? The devil's advocate. The immorality he fostered and spread through the entire social structure was a complex evil.

It was partly his own creation. His courts were hot-beds of grand larceny and perjury. The chief justices were paid by fees and had regal incomes. They also usually arranged fabulous sinecures for themselves or their relatives. For example, Lord Camden's son held a Tellership worth £23,000 in 1807 and collected £3,683 a year until 1840; and in 1874 one of Lord Thurlow's nephews was still receiving £11,000 a year.²⁰ Yet as Bentham was chagrined to note, while the judges reaped the profits:

on the attorneys do . . . the silly and unreflecting people, cast all the blame. . . .

By whom was this system of depredation and oppression invented

and organized? Was it by the attorney, any part of it? No, but by the judges, the whole of it.²¹

Moreover, the judges could be named '*the fathers of lies*': for it is by them, that from first to last, lies have not only been tolerated and uttered, but actually compelled . . . on pain of outlawry'.²² Again and again Bentham excoriated their 'mendacity licence'. What were some of the deliberate perjuries in the courts? The whole system of pleadings was a fabric of lies. For recovery of a debt in equity, for example, before the plaintiff could ask the defendant questions about the facts of the case, he had to deliver a charge. This was a sworn statement asserting the truth of an imaginary series of facts. Here was obvious perjury, for the plaintiff admittedly turned to the defendant precisely for a true statement.²³

Because it is unlikely that twelve men at random will agree unanimously on any issue, Bentham also thought that juries were schools of perjury.²⁴ Before a verdict could be delivered some one or several among the twelve must have sacrificed his true convictions. As we have seen, 'pious perjuries' were almost officially recognized as informal ways of softening the barbarous criminal code. To save a thief from hanging, a jury might well swear that the sterling plate or diamonds he had stolen were worth less than 40/-. The usual verdict of the courts in cases of suicide was insanity.²⁵

In still other extra-legal ways the judges did in fact shape public morals. Through urbanity and tolerance Lord Mansfield set a fine public example. His successor Lord Kenyon lowered the tone, and was known for his severe puritanical attitude in sexual matters. Lord Ellenborough, the next Chief Justice, raised the level again. He refused, for example, to try an action for money won in a cock-fight because such a sport was barbarous.

Bentham has so often been derided as a rudimentary psychologist partly because his thought took two directions. Bentham the elderly propagandist deliberately committed the sins he warned against in his arcane philosophy. He used violent emotive language; he recklessly denounced the motives of his victims, though he had ruled judgments from motives out of his analyses altogether; and he was a reductionist, charging his enemies with 'sinister' self-interest, while all the time aware that motivation is an infinitely complex mystery.

Yet even in his popular philosophy he was not entirely consistent or dogmatic. Most of his attacks on 'Judge and Co.' were propaganda, but he often softened them by admitting that many pardonable weaknesses and not self-interest alone lay behind the evils of law. It was not 'by *mere ill will*' but 'by genuine and unaffected *dimightedness* and *awkwardness*'²⁶ that the legal profession failed to reform the law. Its members made a virtue of intransigence by priding themselves on group loyalty. They feared many consequences:

diminishing the profits, disturbing the ease, lowering the reputation, galling the pride, and, in the words of *Lord Ellenborough's Libel law*, '*hurting*,' '*prejudicing*,' . . . the '*feelings*' of the companions of [their] . . . youth, and most familiar friends.²⁷

If the judge's immorality was partly the product of professional self-interest, it was also partly the effect of a general social phenomenon over which he had much less control. This phenomenon was emotive language. The vocabulary of morals was even more highly charged with traditional eulogistic and dyslogistic meanings than the vocabulary of politics, and a judge was as conditioned to it as his supplicants were. It bred immorality because when men attached strong judgments of approval to acts with bad social consequences, they encouraged them. When they attached strong judgments of disapproval to good acts, they discouraged them. Immorality and ignorance were confounded, for men used the vocabulary of interests, motives, and desires, unaware of hidden emotive meanings.

In the 1770s when Bentham's vision of a new science was still bright, he was as eager to redefine the vocabulary of psychology and ethics as the language of law. The word 'action', for example, was used to refer both to motion and rest, and 'motive' was indiscriminately applied to either. Bentham wanted to introduce unambiguous refinements: forbearance, restrictive, determinative. Forbearance was to action, on his account, what rest was to motion. Restrictive was to forbearance what motive was to action. Determinative was a neutral expression signifying either motives or restrictions.²⁸ But like the Tree, Bentham put these definitions aside in favour of legal analyses. In *The Principles of Morals* he raised the question of emotive meaning and then dismissed it.

Partly to the . . . spirit of detraction . . . partly to the influence of the principle of asceticism, may, perhaps be imputed the great abundance of bad names of motives, in comparison of such as are good or neutral: and, in particular, the total want of neutral names for the motives of sexual desire, physical desire in general, and pecuniary interest. . . . But such speculative disquisitions are foreign to the purpose of the present work.²⁹

In 1813 Bentham raised the question again as part of his arcane philosophy, in the same way that he elaborated on his earlier psychological insights in *The Rationale* and later completed his *Tree in Chrestomathia*. His *Table of the Springs of Action*³⁰ was an attempt to list a great variety of motives with all their eulogistic, dyslogistic, and neutral names as preliminaries to a future neutral moral vocabulary.

Consider the neutral term, hunger. There were no proper eulogistic names for it but there were many dyslogistic ones: gluttony, voracity, greediness, drunkenness, etc. Consider the neutral 'sexual desire'. Again, there were no eulogisms but plenty of disapproval words: venery, lust, lechery, lewdness, etc.

As with the psychological assumptions underlying English law, the vocabulary of morals was blindly reductionist. Once again Bentham's criticism of his contemporaries was the same that later critics level at him. There are no simple emotive terms: they are all complexes of concrete referents and value judgments.* In late new Benthamese he wrote:

* It is in similar terms that the problem of emotive meaning in ethics is carried on today. Like the discussion of the vocabulary of politics by Weldon and Orwell, the subject is very much alive and has made little advance beyond Bentham. That almost nothing has been done to reform the vocabulary of morals and politics in almost two centuries since he began his analyses is one measure of the superhuman task he set himself.

It was fitting that contemporary interest should have been reawakened by C. K. Ogden and I. A. Richards in *The Meaning of Meaning* (New York: Harcourt Brace and Co., 1948), especially pp. 123ff. The discussion now centres on the writings of C. L. Stevenson. See his article, 'The Emotive Meaning of Ethical Terms', *Readings in Ethical Theory*, ed. Hospers and Sellars (New York: Appleton-Century-Crofts, Inc., 1952), pp. 415ff. Like Bentham, he defines emotive meaning as 'the immediate aura of feeling which hovers about a word'. (423). Of course Bentham's focus was different. His analyses were not ends in themselves, but necessary prolegomena to reformed practice. In his descriptions he was rather 'Marxian', explaining the 'aura of feeling' as a product of political, social, and economic power.

in addition to the import which, in the character of a *simple term*, properly belongs to it, will be found involved in every censorial [and commendatory] appellation the import of at least one entire *proposition*, viz. . . . a judgment of *approbation* or *disapprobation*. . . .

To take the case of a dyslogistic appellative, the error . . . consists in this: viz. that, on account of some *accidental* effect, which . . . has been observed to be produced by the *desire*, the whole corresponding group of psychological entities – *pleasure, interest, desire, motive* – are . . . involved in one common and undistinguishing censure: and, *vice versa*, when the . . . appellative is . . . eulogistic . . . whatsoever *mischievous* effects are liable, and apt, to be produced by the desire, are covered and kept out of sight.³¹

But in this part of his thought Bentham did more than rescue early abandoned analyses and carry them further. He had gone beyond his early role of metaphysician and had become a student of all national institutions, not the law alone. He now began to suggest that emotive meaning was one key to class structure. From an inspection of the surplus or shortage of 'good' and 'bad' names associated with an interest or motive, a great deal might be inferred about the *mores* and customs of a society. Toward the end of his life Bentham described the prevailing public moral values as products of class interests, and laid their many variations to the lack of an objective standard and a neutral dictionary. In a late marginal note he wrote that:

standards of right and wrong determining the propriety of the actions of classes are determined by class interests and feelings adverse to the public good.³²

This occurred because of 'the absence of some test or standard of morality acknowledged by the people.'³³

He continued in a familiar way:

Nor is it in great affairs alone that immense mischiefs are created. . . . In the every day transactions of life such evils are constantly engendered as would ensue, were common numeral figures used with uncertainty . . . as if for example the figure 5 were understood by one party as meaning three, by another as meaning six. . . .

The indistinctness with which ideas are denoted leads to this: . . . to uncertainty of action and to all the consequences of parties interpreting the signification of words according to their desires.³⁴

Once again, definition was a fundamental preliminary. No less than his more strictly legal or political analyses, Bentham's psychological and moral definitions were part of his logic of the will. And they were so in two ways, as content and as form. For the materials of his logic were pleasures and pains and their variously complex psychological fictions, and his own position in the nomographical structure was pothographical or deographical. The three general power relationships, superiority, equality, and inferiority, have different modes of address. In private life the will of a superior is a command; in political life, a law. When equals communicate, they offer proposals or propositions. When inferiors address superiors, they send up petitions.³⁵ Bentham's early ethical as well as legal definitions were then petitions. When his ethics later became divided into pure analysis and moral exhortation, he spoke as an equal to equals.

The Two Levels of Utility.

'Eureka!' Bentham cried in 1768 when he first discovered the phrase 'the greatest happiness of the greatest number' in Dr Priestley's pamphlet. And for a year that was that. For taken alone, as a prescriptive standard for the legislator, the principle of utility was non-utilitarian. Without a concrete definition of happiness, it could not be put to use. When Helvétius showed him the needed correlation between pleasures, pains, and happiness in 1769, Bentham could begin to work.

First he defined pleasures and pains. He used the same method of exhaustive bifurcation that he applied exclusively to every fiction. But pleasures and pains were not fictions. They were the atoms of Bentham's new science, the empirical elements of his new model of the moral universe. In 'A Short History of Utilitarianism' he explained that after laying down the all-directing greatest happiness principle, 'at the very next step the nature of the case brings Mr Bentham into the field of particular pains and pleasures.'³⁶

Bentham, then, divided the whole range of conscious human experience into pleasures and pains. His division was similar to Hobbes' 'endeavour toward' and 'endeavour fromward',* and to Nowell-Smith's contemporary version, 'pro-attitude' and

* Plamenatz, *op. cit.*, is good on Bentham's relationship to Hobbes.

'con-attitude'.* All drives and aversions, from the slightest velleity to the most violent passion, from a sudden whim to the most deep-rooted desires, were included in it.

The best account of Bentham's meaning was given, not by him, but by his most perceptive disciple, John Hill Burton.

The term nearest to being synonymous with pleasure is *volition*: what it pleases a man to do is simply what he wills to do . . . [It] may be far from giving him enjoyment: yet shall we say that in doing it he is not following his own pleasure? A native of Japan, when he is offended, stabs himself. . . . It is difficult to prove enjoyment in this case: yet the man obeys his impulses.³⁷

Seen this way as volitions or aversions, pleasures and pains are the fundamental materials of a logic of the will rather than dubious ingredients of a 'hedonistic ethical theory'. Bentham made no ethical theory as such, laying down special or parochial meanings for pleasures and pains. He sought rather to make them exhaustive, so that 'pleasure' should be synonymous with all pro-words, and 'pain' with all anti-words. His 'ethical theory' was a system of definitions, an heroic effort to persuade man to drop the burdensome ambiguities of customary emotive meanings and to take up a new lighter set of Utilitarian anti-ascetic associations. In morals as in law, paraphrasis was the first step on the road to science. Concrete perceptions are the ultimate ground of universal ethical as well as political agreement. By reducing all substantializations to pleasures and pains, Bentham hoped to free ethics from the obscurities of a *summum bonum* and a moral sense in the same way as he had freed political theory from natural rights and laws of nature.

He failed. Men persisted and persist in using the words 'pleasure' and 'pain' in a much narrower way than he urged upon them. This initial failure of language is once again the damning objection to Bentham's discussion. It is very likely the only one he would have accepted himself. In a sense he was

* P. H. Nowell-Smith, *Ethics* (London: Penguin Books, 1954), p. 112. It is also similar to Ralph Barton Perry's 'Value as any object of any interest', *General Theory of Value* (New York: Longmans, Green and Co., 1926), pp. 115ff.; Dewey's 'selective-rejective behaviour'; and Charles Morris' description of axiology as the study of preferences, appraisals, and their interrelationships. See their essays in *Value: A Cooperative Inquiry*, ed. Ray Lepley (New York: Columbia University Press, 1949).

undone by his disclaimers of originality. He borrowed the conventional intractable vocabulary of ethics and tried in vain to bend it to new uses.

There is a second valid objection. When words are defined exhaustively, do they not lose their utility? Are they still significant? Taken alone, 'pleasures' and 'pains', the descriptive parts of Bentham's ambiguous principle of utility, are as empty as the normative greatest happiness of the greatest number. But seen as elements of a complex hierarchy of volitional logic, they become meaningful. Thus Bentham added a second legal definition to his first exhaustive one. 'By instrument of pleasure we are to understand,' he said in his *Preparatory Principles*, 'anything that goes under the name of a *possession*, whether that possession be a real or fictitious entity.'³⁸ The question then is not, what are pleasures and pains *per se*? It is rather, how shall the legislator best estimate the affective responses of his inferiors?

From this viewpoint, much criticism of Bentham seems misdirected. When Nietzsche laughed bitterly at Utilitarianism for its insular view of British pleasure as 'comfort, fashion, and, at the highest level, a seat in Parliament',³⁹ his was not the last laugh. For Bentham's purpose was to liberate his countrymen from these very parochialisms, not to transmit them. Nietzsche was only one among many critics who understand 'pleasure' narrowly, and charge Bentham with ignorance of the infinity of other desirable objects. Because Bentham defined 'pleasure' as any and every volition, their charges collapse.

So does the 'hedonistic paradox' of Sidgwick and Broad, that the more we strive explicitly for pleasure, the less shall we obtain it.⁴⁰ In Bentham's account, whatever we strive for is pleasant.

Nor are *ad hominem* criticisms from Bentham's personality limitations relevant. In the first place, he was not a shallow placid rationalist living in a private, unimpassioned, one-dimensional world.* Even if he had been, however, it would have had no bearing on his definition of pleasures and pains, for that was analytically exhaustive. Nor would it have affected his general principles, designed as they were for the working legislator.

But if Bentham's formal analyses were always completely latitudinarian, the content of his thought was not. He became

* As Laski and Holdsworth, among many others, have claimed. See *A Grammar of Politics* (London: George Allen and Unwin, Ltd., 1950), p. 15; and *A History of English Law, op. cit.*, XIII, 117.

more civilized and tolerant as his experience widened. His adolescent circumlocutions on Horace's 'Despise pleasures' were conventional and puritanical. When he discovered the principle of utility he began to explore the possible varieties of pleasures and pains. Only in 1813, however, when he returned to his long-abandoned ethical analyses, did he become universally tolerant. He concluded that the possibilities were infinite because feeling is private and language is too crude to communicate it.

But what is pleasure, and what is pain? Does every man form the same estimate? Far from it. That is pleasure which a man's judgment, aided by his memory, recommends and recognizes to his feelings as pleasure. No man can allow another to decide for him as to what is pleasure, or what is the balance, or the amount of pleasure; and hence a necessary consequence that every man of ripe age and sound mind ought on this subject to be left to judge and act for himself, and that attempts to give a direction to conduct inconsistent with his views of his own interest is no better than folly and impertinence.⁴¹

In fact sharp psychological dualisms were as impossible as ontological ones. Among pleasures and pains it was again a question of more or less. In *Chrestomathia* Bentham said:

Widely distant as pain and pleasure are from one another in their extreme degrees, not only in their nearest degrees do they run one into another indistinguishably, but . . . [often in the same] operation, by which the one is excluded, the other is produced. But this is a difficulty which . . . the logical tactician . . . [has] to encounter at every step; nor does the nature of things admit of its being either avoided or removed.⁴²

What follows for the legislator? Eudaemonics or the art of maximizing well-being was the trunk of Bentham's Tree and the sole end of his new art-and-science of pleasures and pains.⁴³ What is well-being? It is enjoyment, that is, present pleasure and the absence of pain, plus security. The legislator cannot, then, command men's enjoyments; he can only work to guarantee them. He is society's supreme moralist, but his work is indirect. The chief subordinate end of morals as well as legislation is security.

Man is as civilized, in Bentham's view, as his definition of pleasure and pain is all-inclusive. It is the measure of his sym-

pathy and benevolence. The most civilized man is he whose greatest pleasure is the greatest happiness of the greatest number. Bentham turned next to a definition of happiness. It is a composite of maximum pleasure and minimum pain. In 1827 he said:

The distinction between pleasure and happiness, is, that happiness is not susceptible of division, but pleasure is. A pleasure is single – happiness is a blended result, like wealth.⁴⁴

Once Bentham had learned to relate pleasure and happiness, Dr Priestley's phrase became vaguely meaningful. Bentham now had the beginnings and the end of a system, but the principle of utility was still non-utilitarian. He had an empirical generalization and a normative injunction, a theory of the *is* and the *ought*, but he had as yet no bridge to span the gulf between them. That bridge was his logic, and it was never finished. It had two sections. It was first an hierarchical dictionary of increasingly abstract fictions, from the basic descriptive facts of pleasure and pain through psychological terms like desire, interest, and motive, to the ultimate division of mind, will and understanding; and from there, higher and higher through service, offence, property, and trust, to sovereignty and the greatest happiness principle. It was then a series of subordinate principles, or decreasingly general propositions, which translated the ultimate greatest happiness prescription into working hypotheses for the legislator.

It is therefore impossible to evaluate Bentham's Utilitarianism fairly except as an incomplete structure of definitions and subordinate principles. Yet these in turn cannot be rightly judged until the general principle of utility itself become more sharply meaningful.

The young Bentham was bravely prepared for abuse and neglect, but he was genuinely astonished to find almost total incomprehension and misunderstanding. Nothing could be clearer to him than the principle of utility: it seemed an obvious and incontrovertible truth. Yet it was not so to others. Gradually he saw that men found it cloudy and ambiguous. Though his own intuition remained vividly exact throughout his life, he changed his description of it so that others might share it. Characteristically, his accounts became ever more refined.

How did the principle of utility change? As a branch of logic it was deography, a petition from an inferior to a superior. In its fullest and final form, it was addressed to the legislator and recommended that:

The right and proper end of government in every political community, is the greatest happiness of all the individuals of which it is composed, say, in other words, the greatest happiness of the greatest number.⁴⁵

As such a petition it was:

an act of the mind: . . . A sentiment of approbation; . . . which, when applied to an action, approves of its utility, as that quality of it by which the measure of approbation or disapprobation bestowed upon it ought to be governed.⁴⁶

It was also abandoned history. As most reformers do whenever it seems even remotely plausible, Bentham again disguised his innovations as forsaken traditions. The principle of utility had once been, he claimed, a 'universally pursued, or proposed to be pursued, but now antiquated and exploded end and object'.⁴⁷

If Bentham never ventured an opinion without giving a reason for it, then the principle of utility, though not a law, is the general 'reason, however, for a Law, as it is for any other *article of conduct*, and the only sort of reason that deserves the name: all else is but empty declamation'.⁴⁸ A reason is always a matter of fact, and in human affairs it is inevitably historical. Even before he had fairly begun his characterization of utility, then, Bentham was forced to fill in the area between *is* and *ought*, for an injunction so general as the greatest happiness principle was inoperable in choosing relevant facts.

Non-utilitarian as the principle was in isolation, Bentham nevertheless did what he could to make it intelligible even there. He insisted upon the difference between the descriptive and prescriptive parts and finally labelled them. In 1816 he said:

The . . . phrase principle of utility is . . . employed in two different senses: the *exegetic* or *explanatory*, and the *Deontological*, or *Censorial* . . . the word *principle* . . . is employed to denote any proposition of a general or influential nature: . . .

Very different . . . is the deontological sense . . . [which states:] It is desirable that on every occasion the course taken by

every man's conduct should be that which will be in the highest degree conducive to the welfare of the greatest number of those sensitive beings in whose welfare it exercises any influence.⁴⁹

But Bentham did not go far enough. Actually, the principle of utility is ambiguous in four ways, not two. As psychological description, he applied the doctrine of pleasures and pains to all pro- and anti-affective responses, both as unique perceptions and as established habit patterns. As a normative injunction, he offered it above all as the legislator's Golden Rule, but also as Everyman's.

Bentham slowly was forced to admit that the word 'utility' was ill-chosen. Over fifty years after he borrowed it from Hume, he reluctantly dropped it because it seemed to arouse painful and puritanical images in men's minds. Though it had so many useful conjugates, this virtue was outweighed by his desire to evoke pleasant images. In 1822 he explained the change to Dumont:

Principle of Utility – is dead and gone. Greatest happiness principle has succeeded to it. . . .

What could I do? When I came out with the principle of utility . . . in the fragment [sic], I took it from Hume's Essays. Hume was in all his glory. The phrase was consequently familiar to everybody. The difference between Hume and me is this, the use he made of it was to account for that which *is*, I to show what *ought to be*. After that Paley without noticing me used it, in the sense I used it in. What I should have done was . . . [to take] up Priestley's phrase, the greatest happiness of the greatest number . . . neither by him nor any one else had any application been ever made of it.

Happiness is much nearer the mark than utility: there may be a utility which stops short of the only materials of happiness, viz. pleasures & exemptions from pains, in such sort as to have no reference to it. Utility when misapplied may even have no other reference than to a bad purpose: use the term happiness, & it will . . . [suggest] the ideas of pleasures & exemptions from pains.

Principe de Bienveillance. No: that will never do, it is very short of being adequate. In the idea meant to be designated by the principle of greatest happiness, extent & proportion – extent as expressed by number – are essential ingredients: the principles of the greatest happiness of the greatest number, of the members of the community in question, expresses the matter in full.⁵⁰

Bentham finally settled for the short form, 'Greatest Happiness Principle', rather than its full expansion because the phrase 'of the greatest number' was even more confusing than 'utility' had been. Yet he was still not satisfied, for no conjugates could be drawn from it. He toyed with other possibilities: eudaimonology, eudaimonologist; felicity, felicist, felicitarianism. These neologisms pleased him because, with their Greek and Latin origins, they were less ambiguous than the common English 'happiness'. He died still seeking precision and clarity.

How did Bentham define 'of the greatest number'? Here again he sought to resolve the admitted ambiguities. He failed, for they have puzzled commentators ever since. What weighed more heavily in a social calculation, the quantity of happiness or the number of people involved? Did 'the greatest number' refer to a simple numerical majority or to everybody concerned? Once again Bentham's ideas changed.

In 1823 as he laid down the leading principles of the *Constitutional Code* he wondered whether the end of government should be the greatest happiness of all or of the greatest number only. He decided that 'universality is not possible',⁵¹ because the calculations necessary were far too many and delicate.

His final position was different. He stated clearly, briefly, and emphatically in his 'Introduction' to the *Constitutional Code* that the end of government in any state must be the greatest happiness 'of *all* the individuals of which it is composed'.⁵²

In his unpublished intellectual autobiography, 'A Short History of Utilitarianism', Bentham gave his reasons for this new universality.

Be the community in question what it may, divide it into two unequal parts, call one of them the majority, the other the minority, lay out of the account the feelings of the minority, include in the account no feelings but those of the majority, the result . . . to the aggregate stock of happiness in the community, [is] loss not profit. . . . Of this proposition the truth will be the more palpable, the greater the ratio of the number of the minority to that of the majority: in other words, the less the difference between the two unequal parts; and suppose the condivent parts equal, the quantity of error will then be at its maximum.

Number of the majority, suppose, 2001: number of the minority, 2000. Suppose . . . the stock of happiness . . . [so] divided that by every one of the 4001 an equal portion of happiness shall be

possessed. Take now from every one of the 2000 his share of happiness, and divide it any how among the 2001: instead of augmentation, vast is the diminution. . . . The feelings of the minority . . . laid entirely out of the account (for such in the enlarged form is the import of the proposition), the vacuum thus left may . . . be filled with unhappiness, positive suffering, magnitude, intensity, and duration taken together, the greatest which it is in the power of human nature to endure.

Take from your 2000 and give to your 2001 all the happiness you find your 2000 in possession of: insert . . . unhappiness in as large a quantity as the receptacle will contain: to the aggregate amount of the happiness possessed by the 4001 taken together, will the result be net profit? On the contrary, the whole profit will have given place to loss. How so? Because . . . such is the nature of the receptacle, the quantity of unhappiness it is capable of containing . . . is greater than the quantity of happiness.

At the outset, place your 4001 in a state of equal perfect equality . . . [of] instruments of happiness – and, in particular, power and opulence: . . . Taking in hand now your 2000, reduce this to a state of slavery and . . . divide the whole number with . . . their property among your 2001: the operation performed, of the happiness of the whole number 4001, will an augmentation be the result? The question answers itself.⁵³

Underlying Bentham's discussion is an assumption that there is a relatively fixed quantity of good things, a not unreasonable assumption then but now falsified by industrial development. Should the legislator attempt to redistribute them, to increase some men's happiness, he probably must do it at the expense of others. Pains weigh more heavily in the scale of value than pleasures, and the miseries of dispossession are far greater than the joys of acquisition.

By his own Utilitarian standards Bentham's new account was unsatisfactory, for he never explained how it could be used. He did not answer his own former objection, that to consider the happiness of *all* required impossibly refined calculations. The implication, however, was temporary *laissez faire*. Until government knew what it was doing, let it do little. When it became more sophisticated and had developed the fact-finding apparatus necessary for correct calculations of social consequences, then it was time enough for detailed intervention.

But if Bentham committed himself finally to the happiness of

all, his critics seem not to know it. In his essay 'The Principle of Utility', A. J. Ayer said:

It might be thought that one was required to consider not merely the total quantity of happiness . . . but also the way in which . . . [it] was distributed: so that an action which produced a great quantity of happiness might not be preferable to one that produced a smaller quantity, if in the case of the less felicitic action the happiness was more widely enjoyed. I am fairly sure, however, that this is not what Bentham meant . . . [but rather] that the right action was that which produced the greatest measure of happiness, no matter how it was distributed; . . .⁵⁴

Curiously, Lawrence Lafleur used the same majority-minority hypothesis to deny what Bentham affirmed.

For suppose a hundred people in a community, with an option between a course of action which will make fifty-one happy and forty-nine utterly miserable; and a course of action which makes the fifty-one somewhat less happy and relieves the forty-nine of their misery. To consult happiness, the first course of action should be pursued; to consult numbers, the second. The first was Bentham's meaning. . . .⁵⁵

Admittedly, Bentham's account was incomplete, but so far as it went it was entirely unambiguous. 'Extent, as expressed by number,' he insisted in *The Principles of Morals* and forty years later to Dumont, is one of the 'essential ingredients.' By 'the greatest happiness of the greatest number' Bentham meant neither the greatest quantity of pleasure regardless of numbers, as Ayer claims, nor the greatest happiness of the numerical majority, as Lafleur maintains, but the greatest pleasure and least pain of all the individuals involved.

Did the revisions in the principle of utility amount to very much? No. Bentham changed the name and the emphasis on number, but these were mere housekeeping details, undertaken to clear away accumulated popular confusions.

In the same meticulous spirit, he revised his analysis of the principles opposed to utility. In *The Principles of Morals*, they had been asceticism and sympathy and antipathy. He substituted the *ipse dixit* principle for sympathy and antipathy, and subdivided it. In 'A Short History' he explained his new locution:

It is the principle pursued, so Cicero informs us, by the disciples of Pythagoras. *Ipsē* (referring to Pythagoras) . . . *dixit*; he has said the matter is so and so; therefore, said a disciple of the illustrious sage, so it is.

When Mr Bentham's Introduction to Morals, etc. [sic] . . . was first published, had his views been as clear and as comprehensive as they are at present . . . [the] principle of *ipsedixitism* . . . would have [been] substituted to . . . sympathy and antipathy. . . . [It has] two branches, the one applying to the so-called civil branch of law, the other to the so-called penal branch of law. To the penal branch . . . alone . . . has the principle of sympathy and antipathy any application: the affection of sympathy . . . [is] the sole inducement . . . of reward . . . : the affection of antipathy of every . . . punishment. The principle of caprice was the appellative that afterwards occurred to . . . him for the designation of that branch of the *ipse-dixit* principle which applies to the civil or say non-penal branch of law . . . over which in his system we have found presiding the non-disappointment principle.⁵⁶

The Dictionary of Psychology.

Once Bentham had defined the first and last words in his psychological dictionary, pleasures and pains and then happiness, he made short work of the rest of the vocabulary. Motives, interest, desires – all were pleasures and pains seen in different ways. They were defined for that working psychologist, the legislator. There was a hierarchy of psychological as well as political fictions, and the first ended where the other began. The exhaustive bifurcation between will and understanding was the ultimate abstraction in Bentham's psychology, but it was the initial one of his legal and political analyses.

The first psychological fiction was motive, and it was also the most troublesome, for in common speech it was severally ambiguous. It was used in three indiscriminated ways to signify real or semi-real entities:

the exterior motive being a semi-real physical entity: a physical or else a pathological event: the two interior motives both real mental entities: the one an *idea*, the other a *sensation* of the mind.⁵⁷

But there was still another more usual sense in which motive represented 'a fictitious entity, a kind of passion (quality, disposition) or propensity in the mind'.⁵⁸

To reduce the confusion, Bentham called fictitious motives 'principles'. He offered his simple paraphrastic definition as an unambiguous improvement.

A motive, is the idea or expectation of good or evil: . . . correspondent to every species of pain or pleasure, is a species of motive; correspondent to every species of motive, is a modification of interest.

A *motive*, is an *interest* considered as being in a state of action – as . . . exerting its influence on the mind of the individual in question.

An interest, is a motive considered in an abstract point of view; viz. as possessing the faculty of being called into action, but without presenting . . . any particular occasion.⁵⁹

Motive refers only 'to the particular *good* . . . in view. Interest . . . points not only to the attainment of that good, but to the general effect of that event upon the sum of my well-being.'⁶⁰

Until the end of the 1770s, when Bentham was still tied to the conventional doctrines of faculty psychology, his analyses of offences included estimates of motives.

In estimating the mischief produced by different . . . offences, it is necessary to pay attention to the motive. According as the motive . . . is different, the mischief produced by the offence is different; as may also be the punishment requisite to be applied to it.⁶¹

Like the rest of his system, Bentham's psychological definitions were made to serve his legal reforms. In the logic of the will, motives and intentions were relevant judicial concerns only as they bore on the orders of evil. An unintentional offence is less alarming than one popularly known to be deliberate.⁶²

Gradually Bentham freed himself from the doctrine of motives. By the 1780s he had become doubtful of its value, for that seemed to be outweighed by the hazards of accurate assessment. He acknowledged it still, but only as a last consideration.

To judge an action it is necessary to look first to the effects abstracted from everything else. The effects being well ascertained, we may in certain cases ascend to the motive, in order to discover its influence on the greatness of alarm, but without giving any attention to the good or bad quality which its common name implies.⁶³

By the turn of the century he had abandoned judgments from

motives altogether. He became a resolute pragmatist. Let the legislator look to facts, to acts. Why a man does what he does is an inscrutable mystery. What he does is a plain matter of observation. If the legislator's concern is consequences, not imagined causes, then motives are usually irrelevant. They are also treacherous and untrustworthy, for there is no way of collecting reliable evidence about them. If people notoriously deceive themselves about their own motives, dare they presume to judge those of other men? Bentham asked in 1815:

But how . . . is it possible that the motive a man is actuated by can be a secret to himself? Nothing is more easy . . . indeed, the rare case is, not that of his not knowing, but that of his knowing it.

It is with the anatomy of the human mind as with the anatomy and physiology of the human body: the rare case is, not that of a man's being unversant, but that of his being conversant with it. The physiology of the body is not without its difficulties: but in comparison of . . . the physiology of the mind . . . [they] are slight indeed.⁶⁴

Underneath their legal and political coverings, Bentham's motives are modern rationalizations. Security was the first subordinate principle not only of government but of psychology and ethics as well. He rejected the doctrine of motives as insecure, for the depths of self-deception that men may fall into are bottomless.

Because bad language led to bad acts, Bentham could not forget the doctrine of motives after he had escaped from it. He made a radical shift in his logic: judgments of motives had once been useful legislator's tools for estimating offences; they now became major political fallacies. It was evil and stupid for a man to impute bad motives to his political opponents, for he did

thereby verbally confess his inability to form a true judgment of the merits of the question.

To say to any man . . . [that his] is a selfish motive, is to say what in one sense is perhaps not true, in another sense so incontestably true as to be completely nugatory, and at any rate nothing to the purpose.⁶⁵

It was among the worst of all fallacies for three reasons:
'1. Because motives are hidden in the human breast. 2. Because

if . . . [a] measure is beneficial, it would be absurd to reject it on account of the motives of its author.'⁶⁶ And third, because it presupposed the existence of a class of intrinsically 'bad' motives. But motives are pleasures and pains, and

as in itself there is nothing good but pleasure, or exemption from pain, it follows that no motive is bad in itself, though every kind of motive may, according to circumstances, occasion good or bad actions; and motives of the dissocial cast may aggravate the mischief of a pernicious act.⁶⁷

After motive, the next term in Bentham's order of abstraction was interest, already defined as a general tendency to respond. An interest was a motive seen as a habit. It was a neutral definition, like all the others in his arcane dictionary. But, as we know, he was forced to use popular emotive definitions as well, and 'sinister interest' became one of his most belaboured phrases.

Interests, in turn, set the limit of desires. These were also pleasures and pains, seen even more abstractly as pure will, apart from localized causes or objects.⁶⁸ Re-defined in terms of desires, motives are active focused desires.

The final abstractions were will and understanding. When psychological fictions were considered as an art, as immediate sources of action, they belonged to the will. When they were considered as a science, as products of attention and memory, they belonged to the understanding.

Bentham's logic of the will began, therefore, with the basic images of pleasures and pains that he assumed were shared by all men and rose up through psychological and political fictions to substantive law.

From interests, real or supposed, come desires: from desires come expressions of will and expressions of opinion, for the purpose of drawing . . . other wills into a coincidence and conformity with a man's own. From the united force of an adequate number of wills . . . come legislative arrangements.⁶⁹

It will not do to insist on Bentham's hierarchy; it was not rigid. The one fixed essential was this: all human responses, regardless of the way we describe them, are pleasures or pains.

At this last stage of his psychological analysis, Bentham paused and reflected on some of the crucial questions of ethics and epistemology. What is the nature of ethical disagreement? Bentham's division between arguments addressed to the understanding and the will parallels C. L. Stevenson's distinction between disagreement in belief, resolvable by factual appeals, and disagreement in interest or attitude, possibly irresolvable because of its extra emotive elements.⁷⁰

They agree that disagreements in attitude 'may be rooted in disagreement in belief', which can often be halted by empirical evidence. On Bentham's account, as there was no sharp difference between the will and the understanding, it was always possible that the master, will, might be guided by the servant, understanding. A man so guided was civilized; a man of pure will was a barbarian: for Bentham defined understanding as foresight, an awareness of the consequences of acts. Certainly he expected progress in resolving moral and political disagreements. His entire life was dedicated to it, and his new science was offered as a method for eliminating disagreements in attitude altogether.

But is a completely empirical ethics possible? Can all disagreements in interest be reduced to disagreements in belief? Can man learn to conquer his will and make it serve his understanding?

Once again, Bentham's speculations were legally oriented. Once again, they are scorned as over-simplified. But all law simplifies. The more advanced it is, the more general its commands are. In particular, the English legal process was radically reductionist. It was an elaborate separation of law from fact. The purpose of written pleadings was to reduce a tangled disagreement between litigants to one question of fact for decision by jury. The process was artificial and in many cases arbitrary, but it worked. If Bentham's optimism now seems somewhat pathetic, it did not when the courts were a national stage and enforced ethical agreement was a popular commonplace.

Though Bentham's whole career was illuminated by a glowing vision of a science of morals and legislation, he knew it was utopian. Ideally, he supposed, all disagreements in attitude might be resolved by laying out the entire range of relevant facts. In questions of belief, all man can do is to stifle evidence, for:

when all the evidences are equally present to his observation, and equally attended to, to believe or disbelieve is no longer in his power. It is the necessary result of the preponderance of the evidence on one side or the other.⁷¹

There was, however, an enormous chasm between man as he is and as he might become. A true science of morals waited upon a more neutral, less passionate race of men as well as a neutral vocabulary. In 1790 Bentham conceded, 'If man were as much of a rational animal as he is of a pugnacious one, something might be expected from an unanswerable argument . . . but that is not yet his nature.'⁷²

The fact is, he admitted, will and understanding are regularly reversible, and if a man's understanding may freeze his will, his will may and usually does inflame his understanding. All discourse is persuasive and liable to be fallible. All statements of 'belief' are also statements of 'interest', mathematical propositions no less than lyrics. When a mathematician uses words like 'impossible' or 'necessary', he is making an emotional commitment, a recommendation to other men that they should feel as strongly as he does about the statements they describe.

What, then, are the limits of belief? Of probability? There are none.

As there is nothing whatever . . . that men cannot be made to do, — so there is no fact whatever that men may not be made to speak of as certain or incredible. . . . That two and two make four has, perhaps, never been denied. But that one and one and one make three has been denied. . . .

Neither over internal persuasion, nor over exterior discourse, is the power of interest less at one time than another. Today, men are agreed, that, to the truth of the proposition 'one and one and one are equal to three,' there is but this one exception. Let human laws, or opinion of divine command, or any other efficient cause of interest, experience an appropriate change, there shall be no exception at all, or any number of exceptions. And so in regard to the proposition, two plus two makes four, or any other propositions of grammar, mathematics, or physics.⁷³

As always, art-and-science were one in Bentham's thought, and these speculations were drafted as lessons for the legislator. If all beliefs were relatively uncertain complex mixtures of

evidence and interest, the implication for legislative practice was *laissez faire*. In a fine moving flourish of rhetoric Bentham concluded:

Were it once to be allowed, that . . . probability and certainty are mere fictions and modes of speaking: that all . . . a man can be assured [of], is his own persuasion in relation to it; that such persuasion will have had for its cause some article or articles of evidence, direct or circumstantial, real or personal, and will be the result of . . . the probative force of that evidence; that of such evidence, neither the probative force, nor consequently the strength of his persuasion are at his command; . . . and that therefore it is not in the power of any evidence to give either certainty or probability to any matter of fact (the matter of fact being . . . either in existence or not in existence, and neither the evidence nor the persuasion being capable of making any the slightest change in it;) that it depends . . . upon the mental constitution of A and B respectively, what sort of persuasion . . . shall be produced in their minds by . . . any given article of evidence; . . . were all this to be duly considered and allowed, neither the existence nor the non-existence of a persuasion concerning a matter of fact of any sort, would have the effect of presenting to any person any other person as a proper object of punishment, or so much as resentment.⁷⁴

From Is to Ought.

1. *Facts and Statistics.*

And still the principle of utility was non-Utilitarian. Bentham had assembled many parts of his new science: an initial descriptive psychology, a prescriptive end and a neutral dictionary of moral and political fictions. But a few pieces were still missing: social evidence, or accurate facts about group behaviour, and middle-level rules and principles, or limited applications of the general principle of utility to particular problems.

If one condition of an effective science is a neutral accepted vocabulary, another is accurate measurement. Even had Bentham succeeded in persuading men to adopt his new vocabulary, his difficulties would still have been insuperable and his ambitions superhuman. For reliable social generalizations depend upon reliable social evidence, and in eighteenth-century England there was almost none.

Here was another breeding-ground of insecurity, for laws un-

supported by detailed factual evidence are more or less arbitrary guesses. In Bentham's England, government was by and for aristocratic amateurs. The average M.P. was shockingly ignorant. Trained to ride to hounds and identify Latin quotations, he was baffled when complex commercial and colonial issues were argued in the House.

His helplessness explains in part the ascendancy of administration officials like Charles Jenkinson* under Lord North and George Rose† under the younger Pitt. Men whispered that they were grey eminences, but there was nothing mysterious about their authority. They had taken rare pains to learn finance, and were hard-working experts. The younger Pitt had the same mastery. When he rose to speak on the budget, armed with facts and figures, he awed his audience by his information. Few knew enough to follow his exposition, much less to dispute it.

Knowledge was also one secret of Burke's success: he was an unchallenged expert on India. When he spoke of the administration of justice in Bihar and Orissa, few could gainsay him.

During a debate on Irish commerce in 1780, one M.P. was courageous enough to admit:

Throughout the whole progress of this important measure, I have daily attended and listened to every conversation respecting it. But I have not hitherto voted once: and the reason is, – I am not ashamed to make the avowal: – *it has not been in my power to understand the resolutions.* . . . I by no means stand alone in this predicament. . . . Nay, I believe I may safely assert that the bulk of the people in both countries are in a state of equal ignorance relative to the true scope, import, and above all, the results to be expected from the propositions.⁷⁵

Until 1801 there had never been an official census in England. Appropriately, the directive Population Bill of 1800 was drafted by Bentham's step-brother Charles Abbot, who had for decades listened sympathetically to plaintive Utilitarian appeals for facts, facts, and more facts.

For a short time at the beginning of his career Bentham was himself cavalier about facts. He was always to believe that the

* 1727–1808, first Earl of Liverpool, Secretary at War beginning 1778.

† 1744–1818, Secretary to the Treasury, 1784–1801.

levels of utility had far different value. What *is* signified only as a foundation for what *ought to be*.

The great object, the great *desideratum*, is to know what ought and what ought not to be done by government. It is in this view . . . only, that the knowledge of what is done and takes place without the interference of government can be of any practical use.⁷⁶

But initially he was so preoccupied with his normative ends that he forgot an essential fact. Accurate descriptions of men's behaviour are preconditions of persuasive practicable reforms. Many years later he confessed:

At this [early] period of my life I was not proof against dogmatism. I was more willing to listen to the man who spoke of what *ought* to be, than to him who described what *was*. Experience has given a different value to conversation.⁷⁷

Bentham soon acknowledged that epigrams are no substitute for information and ever afterwards pleaded tirelessly for accurate statistics, aware that ignorance joined to power breeds social misery. The official collection of information became a branch of the logic of the will. It belonged to indirect or preventive legislation. In 1782 he suggested that government keep complete registers of the national population, listing name, address, age, sex, profession, and marital status.⁷⁸

When he planned to reform the Poor Laws in the 1790s Bentham turned to government for statistical information about paupers, only to find there was none. He made sorry fun of its ignorance.

Travellers have told us . . . of a nation of Savages so stupid, that their utmost knowledge of numbers extends not beyond *three*. If the number of any greater multitude be inquired after, the hairs of the head are pointed to as representative of it. *Catch Yahmee?* – how many places of worship? is a question that, in a Turkish town upon the Danube . . . I took the liberty of addressing to the Chief Officer of the Revenue . . . *Chuck* was the answer – plenty. This was all . . . [he] knew . . . about the matter. The degree of information, how apposite soever to Turkish intelligence, is unfortunately not peculiar to Turkish ground. Come back to England – address yourself to those who feed the hungry – feed them in mass – . . . ask them how many mouths there are to feed – *Chuck* is still the answer: . . .

So much for real conversation: – now for an imaginary dialogue. *John* – Come, *Mary* – the children be hungry – Come, bustle about, get 'em their dinner, *Mary*. *Mary* – Dinner? – Aye, that's what I will – But, look ye d'ye see, how many be there of them, *John* – I say – how many children have us two got? – For my part, I don't know. . . .

Were a dialogue of this stamp to be produced upon the theatre, and the scene laid in a Cottage, it would be spurned at as unnatural. In the humblest – in the worst-informed line of life – ignorance (it would be said) does not sink so low. Among *individuals*, such language would be too silly for the merest simpleton. But *government* has never held – has never enabled itself to hold – any other.⁷⁹

In the area of information as well as in the courts, *laissez faire* triumphed. A would-be reformer ran perilous risks. Unable to document his proposals with more than factual fragments, he probably could neither convince his audience of the extent of existing evil, nor himself be sure that his reforms were a genuine improvement.

Bentham deflated another reformer's pretensions. When his friend the Scots economist James Anderson asked an opinion of a favourite scheme to promote commercial fishing, Bentham demanded:

What reason have you offered further than your own averment . . . for thinking it so? What *data* have these twenty years' reflection and experience . . . furnished, upon which any . . . judgment of the matter, can be grounded?⁸⁰

Bentham was humble and hesitant. For many years he stayed close to his specialty, legal analysis. In the 1780s, stimulated by his friendship with the wide-ranging Lord Shelburne, he wandered into new fields. Toward the end of the 1780s he became interested in economic questions. During the 1790s, as his interest became more and more intense, he grew more and more puzzled and helpless. Without social evidence, how could he give convincing answers?

Though he wrote over two thousand pages on the Poor Laws, he admitted that no reform was fully defensible until it were known who and how many were 'paupers'. He printed a blank Pauper Population Table in Arthur Young's *Annals of Agriculture*⁸¹, and appealed to parish relief officers to fill it in

and return it to him. Few did, however, and he abandoned his investigations.

Bentham's banking and insurance projects also came to nothing. Again he printed his schemes in Young's *Annals*. Yet when a parliamentary Bill based on them was introduced, Bentham quickly disavowed it. He told Charles Abbot and George Rose, the Treasury Secretary, that though insurance companies and small-scale savings banks had vast potential for good, they were premature. So long as statistical data were lacking, such companies were headed for bankruptcy.⁸²

In 1799 Bentham tried to learn how much money was in circulation and whether it was backed by specie. Not even the most renowned financial experts in England could help him. Patrick Colquhoun* told him, 'No human being can form any accurate judgment of what may be afloat and current at the same time. It must hang upon conjecture.'⁸³ Sir Francis Baring† agreed, 'It is impossible to form an estimate, or even guess at the amount.'⁸⁴

Bentham returned with relief to the more narrow but more precise paths of law. After 1804 he rarely wrote on economics again because he did not know enough to make valid generalizations. In law his footing was sure, for his writings were largely analytic. He defined offences and adjusted punishments; he dealt with identifiable and numerable aggressions and victims.

Yet for all Bentham's diffidence and discouragement over the collection of empirical evidence, this necessary condition of his new science came closer to success than any other. When he called for a new dictionary and a new logic, he cried in the wilderness. But when he called for social facts and statistics, he was one among many in a growing clamour.

Toward the end of the eighteenth century the scale and tempo of English life increased rapidly. The population multiplied and shifted north; small towns became large cities. The Industrial Revolution was on the way, sweeping farm labourers and pauper children into factories and transforming the nation from a stable

* 1745-1820, one of the first London police magistrates and one of the few people whom Bentham admired unreservedly. For he was an energetic man of strong opinions who based them always on factual evidence - which he perforce collected himself.

† 1740-1810, founder of the financial house, Baring Brothers; chairman of the East India Company, 1792-3.

agricultural economy to a dynamic manufacturing one. The Napoleonic Wars intensified the changes and the problems: to face Napoleon's citizen-soldiers, large armies and large masses of capital had to be quickly recruited.

Never was there so great a need for accurate information and never were so many men anxiously aware of it. Bentham welcomed every effort to fill it. He did not share Disraeli's cynicism: 'There are three kinds of lies: lies, damned lies, and statistics.' By 1815 enough had been done by others for Bentham to hail a new science.

Under an *old name*, even chemistry includes an immense mass of art and science, all *new* within these few years. . . . So, in the department of *morals* and *politics*, *statistics*: a newly cultivated branch of *Geography*, having for its subject the quantities and qualities of the matter of *population* . . . *wealth*, and . . . *political strength*.⁸⁵

As early as 1801 he had himself begun to supply this new science with a new vocabulary: 'noscenda' for individual facts; 'precognita' and 'precognoscenda' for general facts and principles.⁸⁶ It was, however, still very primitive, a collection of piecemeal observations by isolated individuals. Because statistical compilations were to moral science what experiment was to physical science, a fundamental condition of progress, Bentham appealed for large-scale systematic social investigations. In 1832 he enthusiastically endorsed a proposal to form a Statistics Society to collect and correlate masses of facts. The would-be members invited his comments and he gladly delivered them.

Political economy cannot like the physical sciences be advanced by experiment but it may be advanced by observation. But the observations of a single-individual will do little. It is only by . . . combined observations . . . that the sciences can be rapidly advanced or diffused.⁸⁷

Though Bentham rejoiced in these advances, they came too little and too late to help his own new science. Its most advanced branch, indirect legislation, depended entirely upon unavailable facts. Passionately committed to a vision of 'transcendental' legislation as he was, Bentham nevertheless focused on the possible and closed his more utopian explorations around 1783.

2. *Sanctions.*

Though Bentham had disappointingly few facts to work with, he did have an all-inclusive analytic structure to fit them into, if and when they became available. This was the logic of the will and its subordinate doctrine of sanctions. In Bentham's system, sanctions were *the* logical ultimates. They were the most general categories of pleasures and pains, seen sociologically as they affected all men in every action, past, present, and future. Morals and politics were subordinate branches.

When Bentham's doctrine of sanctions is properly understood, some of the most stubborn myths about him must seem doubtful. It is a platitude that he was anti-traditional, unhistorical, un-aesthetic; unappreciative of customs, habits, *mores*, and, as John Stuart Mill charged, 'the whole unanalysed experience of the human race'.⁸⁸ In Bentham's analysis, however, all human experience is part of a vast continuing pattern of sanctions, or overriding inducements to regulated behaviour. Since his classification was logically exhaustive, every conceivable human experience was comprehended in it. In fact he was profoundly aware of habits and traditions, for they determined the shape and influence of sanctions.

This all-inclusive doctrine had the same history as other more limited parts of the system. It was highly complex and Bentham changed both its form and its content. Formally, it became ever more fine-spun, as its content became ever wider and more sympathetic. Originally his four sanctions – physical, religious, political, and moral – had been expanded from Blackstone's sanction of law. The hierarchy among them from physical to moral corresponded to the three ages of law, vengeance, justice, and prevention, and to the division between direct and indirect legislation. Even though many sanctions were extra-legal, their meanings were fixed by the meaning of law, the first word in Bentham's dictionary.

A *sanction* supposes a *law*. . . . A law is a directive rule . . . by which direction is . . . given to human action. . . .

Correspondent to sanction is temptation. A sanction is the inducement by which men are prompted to maintain a line of conduct conformable to the directive rule. A temptation is the inducement . . . which . . . [tends] to cause men to act in opposition to . . . the directive rule.⁸⁹

Whatever behaviour the law leaves undirected belongs, then, to the other sanctions. The political or legal sanction therefore came logically first. 'Temptation' was a second effort at articulation but Bentham never developed it.

During these early years he made still another effort, adding reward or the 'remuneratory' sanction to the list. In 1773 he enumerated the kinds of acts that rewards encourage.

1. Acts of Supererogation; 2. Acts which being everyone's duties are therefore . . . no one's – apprehending a criminal; or 3. Acts requiring an extraordinary exertion of power . . . or 4. Acts not dispersed but collected into Habits – Judges and executive Magistrates, which Habits require a peculiar course of institution to produce. . . .

It is of the essence of an act which admits of this kind of Sanction that it be not such as is required to be performed by all: as in the case of abstinence from crimes. 5. Acts requiring alacrity for which the Idea of compulsion must be removed. Conclude that Warburton's assertion that Reward is not one of the Sanctions of Civil Society is as false as it is paradoxical.⁹⁰

Gradually Bentham began to include a sympathetic sanction. Weak though it might be, he could not overlook it, for how else could he classify his own disinterested dedication? In 1814 he explained:

That . . . the force here termed the sympathetic sanction is in general very weak, is not to be denied. But for . . . omitting it . . . this weakness, were it greater than it is, would not afford any sufficient warrant. Of itself, i.e. and without assistance from any of the other sanctions, it is every now and then seen productive of very considerable effects. It is to the force of this sanction that the principle of utility . . . stands indebted. . . . Under the guidance of the principle of utility, it operates in alliance with the several other sanctions. Under the same guidance it may not infrequently be seen operating in opposition to them, and checking them in those courses of malevolence into which . . . they are . . . apt to be led by the political sanction . . . [with or without] the religious. Equally steady and efficient with . . . self-regarding sanctions it can not be said to be: but a force howsoever weak and unsteady is still a force: and were it not for . . . sympathy, no small part of the good . . . in human affairs would be an effect without a cause.⁹¹

Finally in 1821 Bentham arrived at his fullest sub-division of

sanctions. In a letter to Dumont he listed fourteen, including an important distinction between the aristocratic and democratic branches of the popular sanction. This marked his awareness of a supra-legal insight – class warfare.

Sanctions. Since the *Traité*s* others have been discovered. There are now, I. Human: six, viz. 1. Physical; 2. Retributive; 3. Sympathetic; 4. Antipathetic; 5. Popular, or Moral; 6. Political, including Legal and Administrative.

II. Superhuman *vice* Religious: all exemplifiable in the case of drunkenness; viz. the punitive class.

Note – Sanctions *in genere* duae, punitoriae et remunerariae; *in serie*, septem ut super; seven multiplied by two equals fourteen.

The Judicatory of the popular or moral sanction has two Sections; that of the few, and that of the many; Aristocratical and Democratical: their laws, their decisions, are to a vast extent opposite.⁹²

Here as elsewhere it would be pedantic to insist that any particular classification was the final correct one. Bentham analysed despite himself, as other men eat and sleep. The important fact to remember is that these analyses, despite their effortless and even involuntary nature, were made for a pragmatic purpose. They were tools for the legislator, and they changed as Bentham's picture of the legislator changed. Taken alone as a Golden Rule for legislators, the principle of utility was inoperable. It became useful only when translated as limited rules applicable to limited areas of experience. These rules were analogous to middle-level laws in physical science. The doctrine of sanctions, then, was Bentham's fundamental middle-level rule. By suave manipulation of different kinds of sanctions, the disinterested legislator transformed the *is* into the *ought*.

3. *The Calculus.*

If sanctions were one of Bentham's middle-level principles for relating the *is* and the *ought*, the calculus was another. He offered it, as well, not as a dogma of private ethics but as a useful rule-of-thumb. It was part of the Golden Rule. He pleaded with legislators to accept the radical hypothesis he followed himself.

* Dumont's three-volume French popularization of Bentham's theory of legislation was published in 1802. Ogden's edition is a reprint of Hildreth's American translation.

I suppose myself stranger to all our present denominations of vice or virtue: I am called to consider human actions only with relation to their good or evil effects. I open two accounts; I place on the side of pure profit all pleasures; I place on the side of loss all pains; I faithfully weigh the interests of all parties; the man whom prejudice brands as vicious; he who is accounted virtuous are, for the moment, equal before me. I wish to judge the prejudice itself, and to weigh in this new balance all actions, with the intention of forming a catalogue of those which ought to be permitted, and of those which ought to be prohibited.⁹³

The legislator must become an impartial calculator, a moral mathematician for whom each man had a numerical value of one and only one. It might be objected, Bentham conceded, that:

one man's happiness will never be another man's happiness: a gain to one man is no gain to another; that you might as well pretend to add 20 apples to 20 pears . . . there would not be 40 of any one sort of thing, but 20 of each sort, just as there was before. . . .

The answer to this is, that in all political reasonings we are to consider things as they would appear to a Legislator elevated to that pinnacle of indifference to which all Legislators approach as far as they tend to perfection. . . .

To such an one therefore, any one man is just as much as any other man: the happiness of one part the same and no more as the happiness of another. . . .

In short this addibility of the happiness of different subjects . . . is a postulatium without . . . which all political reasonings are at a stand: nor is it more fictitious than that of the equality of chances to reality on which that whole branch of . . . Mathematics . . . the doctrine of chances is established. . . . The fictitious form of expression in both cases . . . is adopted from a necessity . . . merely for the sake of abbreviation: as it would be endless to repeat . . . what it was it wanted to be rigorously true.

If a legislator desires . . . the happiness of all the persons in the state . . . one man's happiness will be the same to him as another man's: it is not the quantity of each man's happiness, or any man's in particular, but the sum of happiness upon the whole. Suppose yourself the legislator, suppose you had it in your choice to bestow either 10 portions of happiness one to each of ten men, or 11 all to one man, all equally utterly unknown to you, which would you do?*

* B. 14, p. 3. Bentham's legislator and he himself were early examples of Karl Mannheim's 'disinterested planner'. See *Freedom, Power and Democratic Planning*. Only the socially unattached intellectual, Mannheim suggested,

That was the supreme question: what should the legislator do? He was given evidence and forced to estimate its reliability and consequences. To help him, Bentham tried to establish a rudimentary calculus, based on external observable phenomena that could be measured. He emphatically rejected the notion that men could calculate their own psychic responses accurately, much less those of other men.

Understood in this specific way, the calculus is not only meaningful, but useful. Seen in the usual opaque way as a doctrine of private ethics, it is otiose.

The legislator defines offences and regulates punishments. He tries to find a fair balance between them, so that the pains of punishment are minimally more than the pleasures of offending. In what language shall he estimate them? In the vague arbitrary terms of everyday life with their implicit value judgments? Is he then impartial? Has he not rather prejudged the issue before him? The scientist had freed himself from emotive meaning by using the language of number. Bentham borrowed and adapted it to morals and legislation.

It was untried territory and he approached it fearfully. Nothing in his attempt was more admirable than his humility and hesitation before it. He was so doubtful of all his ethical speculations that he wondered whether 'ground so thorny and so slippery . . . [was] knowledge'.⁹⁴ A less rationalist spirit would be hard to find.

The legislator or judge was in a very uncomfortable if not impossible position. Almost every case before him demanded dozens of rapid-fire calculations, many of them about private psychological processes which admittedly could not be measured accurately. Yet he was forced to reach a decision. How much was his opinion worth? Bentham warned him, and all others, against over-valuing it. 'Speaking of the state of my own body, am I thus exposed to error? – Much more so am I in speaking of the state of any other.'⁹⁵ From this observation he drew two rules: '1. Avoid dogmatising. 2. Still more avoid intolerance. In both cases never cease to bear in mind how . . . hollow [is] the ground on which your opinion . . . rests.'⁹⁶

can develop a properly objective social perspective. Thus except with Lord Shelburne, himself a renegade, Bentham carefully avoided close relationships with aristocrats. He knew his own weakness well enough. He *was* liable to be seduced by aristocratic lavishness, elegance, and poised assurance.

The most sensitive, penetrating, just, and experienced judge inevitably acted upon 'imperfectly-grounded inductions'.⁹⁷ His facts, the minds and behaviour of men, had not yet become the subject of a science. Those of the 'psychical class – such as intentions, affections, and motives', never could become a science for they are 'situated out of the reach of direct observations'.⁹⁸ Though he must weigh them, his calculations will be guesses merely. But these were only one limited set of facts among many that demanded instantaneous and simultaneous estimates. In deciding whether a given act was 'good' or 'bad', innocent or a 'crime' calling for an appropriate punishment, the range of relevant considerations was almost endless.

Immediately, he had to judge the act and the man or men who committed it; turning to the past, he must collect and weigh all the 'influencing', 'uninfluencing circumstances', and 'obstacles',⁹⁹ that led to it; in the future, what consequences followed from it? How far did its evil effects, if any, ramify? Would a given punishment achieve its end, future deterrence? Nor was that all. The judge had to calculate his own responses. How far was his judgment distorted by ignorance, social prejudice, self-interest?

The science of number had never been applied to any of these possibilities. So far as they were identifiable by observable phenomena, they could be measured, and Bentham had great hopes of scientific progress. All the same, the range of considerations was so vast, so complex, so hidden, that a judge's decision could never be perfectly scientific. Even in an utopian future, it must remain an ultimately unresolvable mystery. Bentham would have agreed with Justice Holmes: 'General propositions do not decide concrete cases. The decision will depend on a judgment or intuition more subtle than any articulate major premise.'¹⁰⁰ This is why Bentham insisted upon a flexible code of procedure. His main rule was: no fixed rules, for 'Discernment, or the art of judging of individual capacity, is a rare quality, whose use it is impossible to supersede by general rules.'¹⁰¹

Humbly and modestly facing the insuperable, Bentham offered the legislator the tentative fragments of a calculus. The judge should begin the process that leads to judgment with the hypothesis of radical equality. Initially, pushpin is as good as poetry. Taken by themselves, neither are his concerns. He

cannot truly evaluate private pleasures and pains. Over and over again Bentham said, 'of the personal qualifications of individuals, the legislator . . . can have no knowledge'.¹⁰² The judge is not called upon to establish a hierarchy of values unless or until he has good evidence that pushpin or poetry have evil social consequences. Then, Bentham believed, pushpin is better than poetry, for 'the game of pushpin is always innocent: it were well could the same be always asserted of poetry.'¹⁰³

But Bentham was mistaken, and on his own principles. He spoke too hastily, for pushpin may have evil social consequences. Playing it, a child may learn to lie, to cheat, to compete viciously. It is potentially a training-ground of immorality.

In fact, this entire pushpin passage is inconsistent, for at the same time Bentham conceded the superior value of poetry. He began, 'Prejudice apart, the game of pushpin is of equal value with the arts and sciences of music and poetry.'¹⁰⁴ The phrase 'prejudice apart' gave the show away, for he admitted in an important passage, 'In point of utility, apparent justice is everything; real justice . . . is a useless abstraction.'¹⁰⁵ In the same way, the only measurable values are apparent values, those marked by external observable evidence. 'Prejudice' is a vital part of such evidence. Men value the arts more highly than children's games, in small part at least, because other men do.

In the second stage of calculation, the legislator must guess the nature of individual responses and capacities. It is indeed true that Bentham began this analysis with a confident flourish. In Chapter IV of *The Principles of Morals* he listed the seven ways to measure pleasure and pain: intensity, duration, certainty, propinquity, fecundity, purity and extent. Strictly speaking, however, none of these except extent is measurable. We know that Bentham disallowed inferences about 'motives'. Language is not exact enough to express degrees of feeling. All the same, the legislator can make variously well- or ill-informed guesses, and Bentham offered him the distinction between internal and external motives, private psychic responses and observable behaviour from which relatively reliable inferences might be drawn.¹⁰⁶ By studying external motives, a legislator could probably learn to make shrewd guesses about internal ones. Bentham listed thirty-two of these 'circumstances influencing sensibility', among them '*sex, age, rank, race, climate, government,*

education, religious profession: circumstances evident and palpable, which represent the interior disposition'.¹⁰⁷

Even here, conclusions 'are likely to be defective', but in general they will have 'all the justice necessary to prevent the law being tyrannical; and, above all, to conciliate . . . public opinion'.¹⁰⁸

Forty years later he added: 'A slight advance might perhaps be made in this difficult art, did we possess a catalogue of the indications of talents or capacity.'¹⁰⁹

If it is true that apparent values (or external motives) are everything, then Bentham's list of private circumstances (intensity, duration, etc.) is, on his own account, a 'useless abstraction'. Why, then, did he parade it?

Here we must guess as he did. In the first place, he could not master his passion for 'useless abstractions' or exhaustive analyses. When he analysed values, he tried to consider *all* possible kinds and shades, alone and together, otiose or not. He did not claim that men in fact do discriminate or can measure in this precise way, but only that 'These are the circumstances which are to be considered.'¹¹⁰ Analytically, anything can be considered.

Perhaps he nodded towards the eighteenth-century literary convention which dictated that general political speculations be preceded by psychological or ethical overtures. Perhaps he wished to make his legislative recommendations more forceful by relating them paraphrastically to individual pleasures and pains. Any or all of these reasons may have determined Bentham's parade. In any case it was a fatal choice, for it has sent generations of critics in a wrong direction. He himself soon left it for more Utilitarian fields.

Of course he did hold that all men do calculate, consciously or unconsciously, correctly or mistakenly, efficiently or bumblingly. In 1818 he boldly admitted it.

In the great controversy about the foundations of right and wrong among the reproaches cast by the *Sentimentalists* upon their adversaries the Utilitarians, [is] that . . . [they] are mean and frivolous enough to have recourse to calculation. The truth of this charge is undeniable: the error consists in the limitation locally annexed to it. A function so necessary is not neglected. . . . But the sentimentalist draws a curtain which the insensibility or the effrontery of the Epicurean will not suffer him to draw.¹¹¹

Yet Bentham's claim was small: men are variously well aware of what they do. Calculation and civilization march together. The most civilized man is the best calculator. He has the keenest foresight, based on the widest and most accurate estimates of future possibilities. A man may calculate endlessly. He may estimate the value of his own responses, singly or in groups, at this moment or at any time in the past or future. He may apply the process to any and all other men, to equals, superiors, inferiors, friends, enemies. In every case he may consider, drop, or choose alternatives. They may then be spoken of as having been weighed, measured or calculated.

It is also true that Bentham defined virtue as a species of calculation and vice as bad arithmetic.

The last cause of immorality . . . is the preference of the present lesser good to the distant greater good; . . . and the source of the error may be traced to erroneous education, intellectual and moral.

Vice may be defined to be a miscalculation of chances: a mistake in estimating the value of pleasures and pains. It is false moral arithmetic; and there is the consolation of knowing that, by the application of a right standard, there are few moral questions which may not be resolved, with an accuracy and a certainty not far removed from mathematical demonstration.¹¹²

Defined this way, vice was not incorrigibly 'bad'; it was ignorance. Bentham said, 'I never yet found a wicked man who was not proportionably a fool: and of whom I could not point out the cause of his wickedness in his folly.'¹¹³ He repeated the Socratic dicta: vice is ignorance; virtue is knowledge.

When Bentham spoke of 'mathematical demonstration', he was whistling in the dark and knew it. The *Deontology*, the source of this phrase, was a deliberately over-simplified moralistic handbook. Written to equip the common man for his newly central role in Bentham's theory of democracy, it had as much relation to the rest of his system as a daily missal has to a treatise on hermeneutics. It was one thing to talk about publicly observable numerical equivalents in the substantive law, and another, about vague 'calculations' in a popular primer. It was one thing to suggest that people should pay more attention to the consequences of their acts, and another, to claim that they do or can exactly measure their affective responses. Bentham was hopeful but not at all quixotic.

In fact, in this same odd pastiche of a book, he set strict limits to the accuracy, need, or even possibilities of private calculation. Once again he repeated his time-honoured warning against measuring the private responses of other men. That was a job so 'various and intricate' that it was 'one of the most difficult tasks within the compass of moral psychology'. He continued:

Nor would it repay the toil. . . . In the penal field such considerations are highly important, because the amount of crime and the quantum of punishment will . . . have to be estimated by them. But, in the Deontological field, a man stands constantly at his own tribunal – far less frequently at that of others.¹¹⁴

Once again he returned to the legislator.

From his years of observation in the Court of King's Bench, Bentham drew 'axioms of happiness', or tentative working hypotheses for the legislator. These axioms were also middle-level rules bridging *is* and *ought*; and, like the 'Logical Arrangements', they were so important that he made them brief. Their value depended entirely upon pragmatic results. A good legislator, he suggested, would probably find it useful to suppose that:

The value of an instrument of pleasure is the quantity of pleasure produced by that instrument. The value of a Pleasure of expectation is as the *apparent* value of the pleasure of enjoyment from whence it is derived. . . . The apparent value of a Pleasure of enjoyment must be supposed to be as real where no reason for a difference can be assigned.¹¹⁵

The next stage of calculation moved past psychological analysis to the external causes of an evil act. Bentham said very little about them; the complexities of calculation were already vast, and he was eager to move forward to consequences. The following stage, the judge's self-estimate, or rather his inability to make one, was of course one of Bentham's favourite themes. 'Judge and Co.' runs angrily through most of his legal writings.

The final, far the most important, and only accurately measurable 'scientific' calculations were those related to the orders of evil. The hierarchy was fixed by specific quantities of time and men. As we have seen, a correct assessment of the orders of evil is the first condition of a well-made logic of the will, for it

determined the ratio between crimes and punishments. Bentham considered it 'a distinction of cardinal importance',¹¹⁶ for unless government can guarantee primary justice between man and man, it has no claim to exist. Apparent justice is everything, and it is public justice, openly seen to produce good results. Real justice is concerned with evils of the first order, those immediately affecting assignable individuals. Apparent justice is wholly concerned with evils of the second order,¹¹⁷ public alarm and danger.

The movement in the orders of evil is circular: third-order or enduring widespread evil leads ultimately back to the state of nature and original pre-legal insecurity. Under such enduring misery revolution is justified.

This analysis was standard. Bentham made it early, in *Principles of the Civil Code*,¹¹⁸ and he made it late, as an 'Instrument of Invention' in the 1820s. Between 1826 and 1828 he was still hard at work, trying to refine these fundamental middle-level principles to terse Utilitarian axioms. He began his new analysis:

Good and evil fruits of the same tree. Both are produced not only by all political disorders, but by all remedies. Hence a necessary condition precedent to the maximization of the good, and minimization of the evil, is the tracing the course taken by each as it flows from human agency.¹¹⁹

His object was to neutralize the grounds of punishment in the same way that he sought to neutralize the vocabulary of morals and politics. Hitherto, he believed, the emotional arbitrary principle of antipathy had been the sole test. Under the principle of utility the science of number shall replace it.

These were some of his axioms:

Magnitude of evil of offence depends on evil of 2d order. States of agent's mind whereby no evil of 2d order: 1. Unintentionality. 2. Unconsciousness. 3. Infancy. 4. Insanity. In fraud alarm and danger less than in case of force. Offences by trustees as such concerning persons at large – evil of 1st order the same, but that of 2d order reduced.¹²⁰

He continued:

It may happen that evil of the 1st order is less than the good produced by the act: but the evil of the 2d order sustained by the whole com-

munity in addition . . . is the object to be balanced against the good.¹²¹

By one path or another, most of Bentham's investigations led ultimately to his theory of democracy, and the orders of evil were no exception. The first job of government was confining private delinquency within the narrowest possible radius of evil. Bentham conceded that most modern governments, regardless of their form, did this in one way or another. Because he was himself pre-occupied with private delinquencies, he did not pause to consider the range of evil perpetrated by governments themselves. When he turned to constitutional law, however, he saw that third-order evil was dismally widespread. In 1814 he said:

Under any European government instances are scarcely at present to be met with where in its progress . . . over the community the evil produced by private delinquency has made so great an advance as to have arrived at this third stage.

Unfortunately of evil . . . produced by the misconduct of the rulers themselves, [that] has extended so far as the 3d order, examples are by no means rare. . . . Add for example: 1. Ireland. 2. Bonaparte. 3. Irish & English tythe.¹²²

Finally, money played a central part in Bentham's calculus, especially as a precise numerical equivalent for vague immeasurable pleasures and pains. He reasoned this way: happiness depends largely on security; security is property, or settled expectations; property is wealth, and wealth of any kind can be translated into £ s. d. Of all values, money alone can be multiplied, divided, added, and subtracted. 'Pleasure itself not being ponderable or measurable,' he said, 'to form an estimate . . . take the general source, and thence representative, of pleasure, viz. *money*.'¹²³

When Bentham's calculus is seen in its enormous scope, ranging from the shadowy awareness of the savage to the infinite ramifications of third-order evils, the diatribes of critics seem overly harsh. They do not see that Bentham offered to apply the science of number to legislation as a practical device to be tested in use. Nor do they see his qualifications and hesitations.

That people do not and cannot foresee *all* the consequences of *all* their actions is not a fit objection. Bentham neither said nor

implied that they could. Yet it is G. E. Moore's criticism of Utilitarianism.¹²⁴ According to Moore, Utilitarianism is a theory which talks about *total* quantities of pleasures and pains and means strictly what it says. But Bentham never felt sure enough to be strict or total about anything. He recommended calculation to everybody on the ground that they might be happier if they paid more attention to the consequences of their actions.

Moore continued his criticism with an intricate discussion of Utilitarian *intrinsic* good, not only in this universe but in any conceivable one. But 'intrinsic' is not even in Bentham's new dictionary. 'Good' and 'bad' are public judgments about the social effects of actions. The way to establish a hierarchy of values is to measure the radii of consequences. A legislator assigns values now, judging from concrete evidence, not for imagined universes. To ask whether one set of effects was intrinsically better than another, Bentham would have dismissed as empty dilettantism.

In fact Moore did not inflict this theory on Bentham. Indeed Moore doubted whether anyone had held it. His invention is at least a model of ingenious academicism.

Although A. J. Ayer has written one of the best short studies of Bentham, he too follows Moore's analysis of the calculus. Nor does he hesitate to charge Bentham with it. He claims that Bentham wished his principle to be regarded 'not as a rule for passing moral judgments after the event, but as a practical guide to action.' A man must therefore be able to assess the consequences of his actions. But how can he 'possibly work out the sum? . . . Bentham's process of "sober calculation" turns out to be a myth'.¹²⁵ But utility was both a principle of *ex post facto* judgment and a guide. The uses were inseparable. The larger a collection of good judgments about past performances a legislator makes, the wiser his future counsel will be.

Perhaps Nietzsche may have the last words. Odd as it may seem, they have the true Benthamic spirit.

A man who wishes to dispose of his future . . . must first have learned to separate necessity from accidental acts; to think casually; to see distant things as though they were near at hand; to distinguish means from ends. In short, he must have become not only calculating, but himself calculable, regular even to his own perception, if he is to stand pledge for his own future as a guarantor does.¹²⁶

What Ought to Be: The Role of the Deontologist.

And still the principle of utility was not fully Utilitarian. Still there were gaps between the *is* and the *ought*. How could so infinitely complex, all-comprehensive, and ambiguous a description-prescription be put to direct practical use? How could a principle that referred to *every* area of experience be applied to any particular one? It began to be useful only when it was located in the hierarchy of the logic of the will. It sat like a spider at the centre of Bentham's thought but it was confined by the analytic web that he spun. And this web was never more than fragments. It was limited by Bentham's industry and imagination which, though seemingly tireless, were yet exhaustible; by the indifference or aversion of his chosen legislative audience; and, not least, by the very nature of the case. The principle of utility was never, because it never could be, fully defined.

As Bentham understood it, the principle was genuinely scientific, similar to the concepts of modern physics. He antedated Bridgman's operational theory in which '*the concept* is synonymous with the corresponding set of operations.'¹²⁷ In the same way, the principle of utility was defined and developed in use. It is its subordinate articulations, the total sum of particular facts and increasingly general middle-level rules that Bentham described and synthesized. And these were endless.

He began with an all-comprehensive Encyclopedical Tree and made some progress in almost every branch, but the law was his special subject and he advanced far further in procedure and evidence than in any other area. Yet refined and recondite as his analyses of legal technicalities were, they too were unfinished and must always remain so. For all useful rules, according to Bentham, are grounded on facts, which change and multiply unceasingly.

There was no final rigid dogma in this system. The principle of utility was a general name for an open-minded, methodical, scientific approach to any problem. Utilitarianism is not a formula but an attitude. It is not the name of a particular psychology or ethical theory but the name of an unfinished and unfinishable new scientific discipline, applicable to all experience and not psychology and ethics alone. Though the principle of utility was the standard by which Bentham measured every phenomenon, though it was the beginning, middle, and

end of his system, it was eternally elusive. It was a series of closer and closer approximations to a normative ideal, that what ought to be is the greatest happiness of the greatest number.

The keeper of that ideal was the legislator. He was the universal man of Utilitarianism, the overseer and director of all social action, a lexicographer, metaphysician, logician, psychologist, and a moralist or deontologist as well. He must create new moral values. Here again, as in the importance of a moral calculus and the perversion of Christianity by St Paul, Nietzsche agreed with Bentham. Philosophers and legislators create values. 'Only after a corpus of law has been established can there be any talk of "right" and "wrong",' Nietzsche said. 'To speak of right and wrong per se makes no sense at all.'¹²⁸ To help the legislator, Bentham offered the rudiments of a science of morals: indirect legislation.

Though moral science waited upon a future science of legislation, it was no less possible. Given a new dictionary and middle-level laws based on the principle of utility; given a full collection of accurate social statistics; given a deep and sympathetic understanding of human nature, the legislator could and should become a moral reformer, inventor, scientist. After he began to bring Utilitarian order out of the chaos of common and statute law, out of public behaviour directly controlled by legislation, he must turn his attention to extra-legal acts or private behaviour. Such acts were beyond his immediate power to control, but they could be guided indirectly by a judicious manipulation of sanctions.

The courts were his stage. There he must act as a living example of Utilitarian virtue. But this was not enough. Behind the scenes he must become a deontologist, a working moralist, a doctor of preventive moral medicine who encouraged the kind of behaviour that led to good rather than evil social consequences. Thus he might gradually make himself superfluous, for when men choose to behave well they need not be commanded to do so and punished for malfeasance.

Bentham defined deontology as the art-and-science of what is '*fit, fitting, right, becoming, proper*' to be done. It was 'dicastic' or 'censorial' ethics,¹²⁹ expressing judgments of approval or disapproval, rather than simple 'exegetic' or descriptive ethics. The legislator-as-deontologist had a very subtle and delicate job, for Bentham insisted that a man must be his own judge of his private

pleasures and pains. But a man might be blind, unaware of the causes or effects of his appetites and actions. He could be taught to see by the Utilitarian legislator, who stood disinterestedly above society with a uniquely keen, trained social vision. The job of the legislator-moralist, Bentham explained in 1814, 'is neither more nor less than that of a Scout'.¹³⁰ He must neither drag nor push men against their will, but rather offer them only clear maps of the best route to travel.

He can place before the eyes of the inquirer a sketch of the probable future more correct and complete than would have presented itself to his view in the midst of present influences. The moralist may assist him in making reflections and drawing conclusions – in taking a more complete audit of the past, and from thence deducing calculations or conjectures for the time to come. . . . And thus far he will be labouring in an honest and honourable vocation. He in fact to be most useful will be employed somewhat in the character of a man hunting for consequences.¹³¹

Before Bentham's philosophy split into arcane and popular fragments, his legislator was this scout, a new Moses who led his flock from *is* to *ought*. What job, then, did Bentham assign himself? He was the scout's scout, the original pathfinder, the scientist whose knowledge should direct the legislator-moralist's acts. But Bentham's new Moses was not only blind; he had clay feet. Most eighteenth-century English legislators would neither lead nor be led. They were on the whole well satisfied to stay put. Bentham confessed ruefully, 'He pipes but they do not dance – he makes the advances, but they do not follow.'¹³²

There was no alternative: Bentham became a deontologist-despite-himself. When after the turn of the century he returned to ethical questions, he continued his former neutral analyses of ethical terms, but he also began to write moralistic exhortations. As we have seen, his *Deontology* or popular moral primer and his democratic political essays were tactical manoeuvres in the same new strategy. If legislators refused to lead, the common man must learn to lead himself. Meanwhile, Bentham offered himself as a substitute scout.

The logical status of Bentham's ethics changed from Nomography, the addresses of a superior to his inferiors, to Pothography, those statements of an equal to fellow equals. In this way it is possible to see his ethics as a branch of legal philosophy, or his

legal philosophy as a branch of ethics. If the legislator is the ultimate lexicographer, the vocabulary of ethics is one among all classes of abstractions whose meaning he determines. Seen from another angle he is the ultimate deontologist, and political relations like obligations, rights, exemptions, and privileges may be considered as sub-classes of a moral vocabulary, offshoots of the popular or moral sanction.¹³³ In either case, Bentham's political and ethical theories are inseparable parts of the same vast and endless Utilitarian web.

His grand vision was always the same: an ideal Utilitarian world where the greatest happiness of the greatest number was the operative Golden Rule, firmly based on a new neutral 'art-and-science' of morals and legislation. His method was always the same: to weave together what is and what ought to be by an increasingly fine-spun articulation of middle-level 'laws' or generalizations. These formed the 'logic of the will', and Utilitarianism, the 'art-and-science' of morals and legislation, was the whole complex web of facts, rules, and principles; form and content combined.

All these strands were interdependent, and Bentham's pattern of what ought to be was only as thick-textured and vivid as his middle-level rules and principles were fully elaborated. They never were. He began to spin out the details of what ought to be as indirect or 'transcendental' legislation, the highest syntheses of generalizations in the logic of the will and the final tie between the *is* and the *ought*. But he lost heart and abandoned these syntheses in 1783. Thereafter he resigned himself to dualisms and offered two philosophies. Yet this was only a tactical retreat, without effect on the overall structure of his thought. First and last, Utilitarianism was the sum of *all* its parts, descriptive and normative: a dictionary, a logic, a mass of psychological and social evidence, and an unprovable ethical injunction.

What then were Bentham's fragmentary 'transcendental' recommendations? What ought to be? Because his system was so tightly interwoven, the answer must wait on a fuller description of his new 'art-and-science'. How did he define 'art-and-science'? What are the analogies between Utilitarianism and other sciences? Are critics justified in dismissing Utilitarianism as rationalistic, deductive, 'geometric', mechanistic? Is it useful to compare Bentham's method with the techniques of modern science? How close is their resemblance?

CHAPTER 5

- 1 X, 564.
- 2 *The Limits of Jurisprudence*, pp. 115-6.
- 3 I, 9.
- 4 B. 69, pp. 52ff., early 1770s.
- 5 B. 127, p. 288, 1818.
- 6 B. 164, p. 39, 1818.
- 7 B. 149, p. 360, 1831.
- 8 J. S. Mill, *A System of Logic*, *op. cit.*, p. 580.
- 9 I, 269, note.
- 10 B. 10, p. 224.
- 11 IX, 77. 12 VI, 258.
- 13 V, 90, *The Art of Packing*.
- 14 V, 265ff., his collection of papers under this title, published separately in 1830, including 'Defence of Economy Against Burke', written in 1810.
- 15 *Burke's Politics*, ed. Ross J. S. Hoffman and Paul Levack (New York: Alfred A. Knopf, 1949), pp. 176ff.
- 16 VII, 55. 17 VII, 581.
- 18 A. M. 33551, pp. 327-8.
- 19 VII, 563ff. These subtle discussions are another reason why I value *The Rationale* so highly.
- 20 Mackinnon, *op. cit.*, II, 292, note.
- 21 II, 111-12. 22 II, 60. 23 II, 48-9.
- 24 See pp. 422-9 below.
- 25 II, 41.
- 26 VI, 143, *The Art of Packing*, 1809.
- 27 *Ibid.*
- 28 B. 69, p. 70, *Preparatory Principles*.
- 29 I, 63.
- 30 I, 195ff., edited by James Mill.
- 31 I, 209, *Table of the Springs of Action*.
- 32 B. 149, p. 320.
- 33 *Ibid.*
- 34 *Ibid.*
- 35 V, 270.
- 36 *Op. cit.*, section 16.

- 37 I, 22, Burton's Introduction.
- 38 B. 27, p. 35, 1770s.
- 39 *Beyond Good and Evil*, *op. cit.*, p. 156.
- 40 C. D. Broad, *Five Types of Ethical Theory* (London: Routledge and Kegan Paul, Ltd., 1951), especially the chapter on Henry Sidgwick, pp. 143ff.
- 41 B. 149, p. 358, no date, *ca.* 1815.
- 42 VIII, 89.
- 43 VIII, 289. See also VIII, 82-3.
- 44 X, 585. 45 IX, 5.
- 46 I, 1, note, *The Principles of Morals*.
- 47 V, 143, 1809.
- 48 B. 69, p. 72, *Preparatory Principles*.
- 49 B. 18, pp. 122-3.
- 50 B. 10, p. 129, 6 September.
- 51 II, 269.
- 52 IX, 5, my italics.
- 53 *Op. cit.*
- 54 *Jeremy Bentham and the Law*, ed. G. W. Keeton and George Schwarzenberger (London: Stevens, 1948), p. 251. This essay was reprinted in Ayer's own *Philosophical Essays* (London: Macmillan and Co., 1954).
- 55 Introduction to the Hafner edition, *op. cit.*, xi.
- 56 *Op. cit.*
- 57 B. 27, pp. 25-8, 1770s, 'Of the Principles of Human Action'.
- 58 *Ibid.*
- 59 VI, 257.
- 60 *Ibid.*
- 61 B. 27, pp. 25-8.
- 62 *The Theory of Legislation*, *op. cit.*, pp. 252ff.
- 63 *Ibid.*, p. 255.
- 64 II, 477.
- 65 B. 146, p. 51, no date.
- 66 II, 415.
- 67 *Ibid.*
- 68 VIII, 280. 69 IX, 45.
- 70 Hospers and Sellers, *op. cit.*, pp. 415ff.
- 71 X, 146, 1781-5.
- 72 B. 35, p. 42.
- 73 VII, 82, *The Rationale of Evidence*.

- 74 *Ibid.*, 78-9.
 75 Wraxall, *Posthumous Memoirs*, *op. cit.*, pp. 148-9.
 76 Stark, *op. cit.*, I, 224.
 77 X, 124.
 78 *The Theory of Legislation*, *op. cit.*, p. 416.
 79 B. 149, pp. 242-3.
 80 X, 128, 28 May 1783.
 81 In 1797. See VIII, pp. 358-461.
 82 X, 333-4, 1799. 83 X, 339. 84 X, 340. 85 VIII, 27.
 86 Stark, *op. cit.*, III, 378ff.
 87 B. 149, p. 241.
 88 Leavis, *op. cit.*, p. 59.
 89 A. M. 29809, p. 28, 1821.
 90 B. 96, p. 115.
 91 A. M. 33550, p. 32.
 92 I, 14.
 93 I, 81, *The Principles of Morals*.
 94 VIII, 289. 95 VIII, 330.
 96 *Ibid.*
 97 VIII, 209. 98 VIII, 210.
 99 *Ibid.*
 100 Dissent in *Lochner vs. N. Y.*, *Holmes-Laski Letters*, *op. cit.*, I, 238.
 101 II, 195. 102 II, 205. 103 II, 253.
 104 *Ibid.*
 105 II, 21. 106 VII, 54.
 107 I, 22, 34, *The Principles of Morals*; Hafner, pp. 44-5.
 108 I, 34. 109 II, 195.
 110 I, 16; Hafner, p. 29.
 111 B. 128, p. 421, 1818, 'J. B.'s Resolutions on Government at 70'.
 112 *Deontology*, *op. cit.*, I, 130-1.
 113 B. 25, p. 109, *ca.* 1789.
 114 *Deontology*, I, 68.
 115 B. 27, p. 20, *ca.* 1776.
 116 II, 20. 117 II, 21.
 118 *The Theory of Legislation*, pp. 48ff.
 119 A. M. 33549, p. 245, July 1826.
 120 *Ibid.*, p. 242, October 1827.
 121 *Ibid.*, p. 247.

- 122 A. M. 33550, p. 18.
- 123 IV, 540.
- 124 'Utilitarianism', Hospers and Sellars, *op. cit.*, p. 39.
- 125 *Philosophical Essays*, *op. cit.*, p. 268.
- 126 *The Birth of Tragedy*, *op. cit.*, p. 190.
- 127 P. W. Bridgman, *The Logic of Modern Physics* (New York: The Macmillan Co., 1948), p. 5.
- 128 *Genealogy of Morals*, *op. cit.*, p. 208.
- 129 VIII, 93.
- 130 B. 14. See also *Deontology*, I, 29-34.
- 131 B. 148, p. 358, no date, *ca.* 1815.
- 132 II, 58. See Introduction above, p. 4.
- 133 A. M. 33550, 80, 1819.

A New 'Art and Science'

Science and Scientific Method

'The novelty . . . [of scientific discovery] comes not from the data, but from the inference: by it we are led to look at familiar phenomena in a new way, not at new phenomena in a familiar way.'

STEPHEN TOULMIN

Analogies and Invention.

Is Utilitarianism a science? Of course it is, in Bentham's own broad definition. 'What is science,' he asked, 'but memory and judgment applied to objects to which the bulk of mankind are unable to apply them?'¹ But if it is limited to exact parallels with geometry or eighteenth-century physics, then it is not. For Utilitarianism is not primarily 'geometric', rationalistic, deductive, or mechanistic; nor is it a collection of 'universal laws'. It is a unique method that borrows techniques common to many or all sciences, adds value judgments of its own, and applies them both to particular problems of morals and politics.

'Applies' is the key word. There is nothing pure about Utilitarianism. If it has no value-in-use, it is worthless. Like chemistry it is a compound pure and applied science. In 1778 Bentham drew the analogy.

The science of legislation is a practical science. It loses its use and dignity if it rests in speculation. When we have learnt to understand the language and relish the beauties of a classic author . . . we have done all that is to be done with him. . . . But in chemistry we have a further task. . . . It is not enough to know of what elements the several composite bodies . . . are made . . . it is . . . our business . . . to go on and by inventing new combinations . . . to draw new . . . advantages from them to which they were never before subservient.²

Anxious to avoid confusions and false parallels, Bentham gradually replaced the word 'science' with the phrase 'art-and-science'. All 'sciences' have corresponding 'arts'. There is no knowing without doing, no theory without practice, no understanding without will.³ They blend imperceptibly together. The more pleasure a scientist takes in his work, the more useful it is, and the more it is an art. On the other hand, the more comprehensive and precise an art becomes, the more it is a science.

Bentham described the relation between them over and over again. In one of his more mature statements he explained:

Practice, in proportion as *attention* and *exertion* are regarded as necessary to due *performance*, is termed art: knowledge, in proportion as *attention* and *exertion* are regarded as necessary to *attainment*, is termed *science* . . .

In the very nature of the case, they will be found so combined as to be inseparable. Man cannot do anything well, but in proportion as he *knows* how to *do* it: he cannot . . . *know* anything but in proportion as he has practised the *art* of learning it.⁴

Their pragmatic interdependence was one of Bentham's fundamental axioms, or Instruments of Invention: look to the end in view, or *Aspice Finem*. He was sure that:

Only by attention to the end . . . can improvement in any shape be made. Only with reference to use – understood always as the attainment of happiness . . . has knowledge . . . any claim to attention: only with reference to practice has knowledge any use: only by its subservience to art is science of any use.⁵

Bentham's hyphens did not do away with the dualism between art and science. Two names suggested two separate things, and he wanted to substitute the single word 'discipline' to include them both.⁶ He also used the word 'field' in the same curiously modern sense, to cover the whole expanse of art and science.⁷ That part of the entire field more particularly concerned with method was logic. Arithmetic was one subdivision and the logic of the will was another. Each 'science' took its place in the field according to its mixture of knowing and doing; relatively pure speculations in one corner and preponderantly practical 'disciplines' in another. Chemistry, Utilitarianism, and medicine, then, were neighbours at the practical end of the field. The 'science' of morals and legislation shared some analogies with all

sciences, many more with chemistry, and most of all with medicine.

This medical analogy is the key to Bentham's new science. He pursued it always, in dozens of nuances, and took it most seriously. No other sciences were as urgently practical as legislation and medicine. As early as the 1770s Bentham declared:

The art of legislation is but the art of healing practised upon a large scale. It is the common endeavour of both to relieve men from the miseries of life. But the physician relieves them one by one: the legislator by millions at a time. . . .

The Collection of punishments is the *materia medica* of the body politic.

This is not a mere fanciful analogy: it is not one of those superficial resemblances which rest only in words. . . . It is applicable to the banishment of a thousand prejudices.⁸

Over fifty years later he was still asking his readers always to 'keep in mind this radical allusion. The community is the body politic. Misdeeds are its disorders. . . . The legislator is its medical practitioner – its surgeon.'⁹

Bentham was only one among many to borrow this hoary analogy, almost as old as Hippocrates.* But he alone used it exhaustively, as more than a fleeting metaphor.

As medical progress depended upon a preliminary science of anatomy, so the logic of the will was 'to the art of legislation, what the science of anatomy is to the art of medicine'.¹⁰ The enactive, expository, and reason-giving clauses of Bentham's codes were to the law what arteries, veins, and nerves are to the body: a pervasive continuous articulation.¹¹ Legal offences were ills, warts, cancers, sores, eruptions, 'diseases in the body politic', with four classes of remedies: preventive, suppressive, satisfactive, and penal.¹² Rewards and punishments were the legislator's pharmacopoeia, remedies, cures.¹³ Money was an 'antiseptic' against corruption. For minor social ills, Bentham spoke of sedatives and laxatives; for major evils he called for surgery.

* For example, Plato, Bacon (see p. 140 above), Goethe, Nietzsche, and Wittgenstein ('The philosopher's treatment of a question is like the treatment of an illness,' an attitude described as 'therapeutic positivism'. See Passmore, *op. cit.*, pp. 427–8).

His 'transcendental' legislation was indirect law, analogous to preventive medicine.

Bentham described Utilitarianism as 'mental pathology', a new science that needed a 'moral thermometer', registering every degree of happiness and suffering. Admittedly this was:

a point of unattainable perfection: but it is right to contemplate it. . . . The feelings of man are sufficiently regular to become the object of a science or an art . . . Medicine is founded upon the axioms of physical pathology: morals are the medicine of the soul: legislation is the practical branch; it ought, therefore, to be founded upon the axioms of mental pathology.¹⁴

Throughout his life Bentham drew up lists of these axioms, empirical generalizations that might serve as prudential hypothetical rules for the legislator. He continued to recast and refine them until they showed the precise brevity that marks his more important work.*

One reason why Bentham made so much of this medical analogy was the glowing example of progress it offered. Shortly before he was born, a new era in medical teaching began. In 1743 William Hunter (1718-83) gave his first course of anatomy lectures, thus inaugurating scientific surgery in England. His Hunterian School soon attracted crowds of students. As a unique feature of their training, he required them to dissect a body.¹⁵ In the same way, Bentham hoped to establish legal schools where future lawyers would learn to dissect laws.

New hospitals sprang up all over the British Isles: between 1700 and 1825, 154 were established. Again Bentham was impressed. But perhaps nothing in the history of medicine encouraged him more than the success of vaccination. Throughout the civilized world doctors quickly acknowledged and practised Jenner's great discovery, and Bentham applauded their disinterestedness, for they voluntarily 'lopped off one of the most lucrative branches of their profession'.¹⁶ Might lawyers not be taught to do the same? Even more remarkable, Parliament voted Jenner two gifts, £10,000 in 1803 and £20,000 in 1806. Here was a prophet honoured in his own country!

But the main reasons for Bentham's preoccupation with legal-medical analogies were methodological. Medicine and legislation

* For a fuller discussion of these axioms, see below, pp. 285ff.

are in fact uniquely analogous. Utilitarian legislation is universal in the same sense that anatomy and physiology are. All men have roughly similar skeletons, organs, nervous systems, pleasures and pains. Law and medicine are normative in the same way; both begin with open value commitments. Doctors take the Hippocratic oath, vowing that 'I will use treatment to help the sick according to my ability and judgment, but never with a view to injury and wrong-doing. I will keep pure and holy both my life and my art.' Bentham's ideal Utilitarian legislator made an Inaugural Declaration, swearing to uphold the Greatest Happiness Principle.

Never . . . will I suffer myself to be guided by any other wish or rule, than that by which a surgeon is guided in the treatment given to his patients. . . . Never will I concur in administering, to any . . . patient . . . pain . . . exceeding the least, that, in my eyes, is sufficient, for preserving the whole community, himself included, from pain in some greater quantity.¹⁷

Although Bacon used the same medical analogy, his injunction, *Fiat experimentum!* was relatively useless in either medicine or legislation. For their truths were drawn from many kinds of investigation and not from experiment alone. What are the foundations of medical and legal science?

Bentham's reflections on scientific method have two histories. He closed the first in the 1770s and began the second between 1811 and 1815, by reviving the sleeping arcane half of his philosophy. As his interest in logic and metaphysics quickened, so did his concern with scientific method. While his popular writings became ever more high-pitched and long-winded, his esoterica became ever more neutral and concise. He left no full-scale treatise on scientific method, but only a disjointed series of maxims and principles. All the same, they are very important in the canon of later Bentham, for there, as we know, brevity is a measure of value.

Briefly, then: 'Experience, observation, and experiment – these are the foundations of all well-grounded medical practice: experience, observation, and experiment – such are the foundations of all well-grounded legislative practice.'¹⁸ This was a fundamental Axiom of Mental Pathology.

The heart of the process was observation, for an unsorted welter of experience is relatively useless, and effective social

experiment is difficult and rare. In his very important *A Short History of Utilitarianism* (1829), Bentham wrote:

Fiat experimentum was the aphorism of Lord Bacon. . . . *Fiat observatio* was the aphorism of Mr Bentham: for *observatio* not *experimentum* was the appropriate word here. The phenomena of the material world . . . might without reserve . . . be taken for subjects of experiment as well as observation. . . . In the case of moral and political science, the proper subject-matters of observation were pains and pleasures. . . . Without reserve these might be taken for subject matters of observation: but not without great reserve and caution for subject of experiment: especially in the case where the institution of the experiment is any other person than the Sovereign. . . .*

When Bentham was young he had taken a different approach. He was then much closer to his intellectual origins and framed his questions in Locke's terms. He was more concerned to show what Utilitarianism was not than what it was. Was a science of morals and legislation demonstrable, as Locke hoped it might be? If Locke's attempted demonstration failed, could another kind succeed? Were valid deductions possible? From what premises could they be drawn?

Bentham began with an attack on Locke's *a priori* equation of justice and property.

'Where there is no property,' says Locke, 'there can be no injustice.' This he gives as an instance of a demonstrable proposition . . . in the most rigid sense, as demonstrable as any in Euclid. . . .

Tis rather unfortunate that he should have stumbled at the threshold . . . so far from being *demonstrable*, it is not . . . true.

If there be any person to whom it appears plain that wherever there is no property, there is no injustice, it is because that person when he speaks of *injustice* means neither more nor less, than the *invasion of property*. . . .

Now this is what I take not to be true. I beat a man on the back for instance. This act of mine . . . is certainly an act of injustice. Why? because the man has a property in his back? no, but because . . . I give him pain.¹⁹

In another essay Bentham continued:

* *Op. cit.*, Section 14. The Panopticon was of course intended to be a great social experiment under exact test conditions.

The Moral Sciences are they susceptible of demonstration? It is what men have been solicitous to know. And why solicitous? This from the idea men are disposed (from the use of it in Logic and Geometry) to annex to the word demonstration. When a thing is demonstrated everything is done that can be done. A man's satisfaction is complete. It puts an end to hesitation in the enquirer, and to dispute in the antagonist. . . .

A man proceeds with tranquillity to act in consequence. Why? because he is satisfied. . . . Now this satisfaction, if he obtains it, he obtains what he wants – it is no matter whether it be by means of lines and spaces, or of mood and figure. . . . Any thing else that will give him equal satisfaction will equally answer his purpose. . . . A man may go away well satisfied from hearing such and such men say that such a thing has been done, and as fully determined to act in consequence as, from having it proved, that the 3 Angles of a triangle are equal to two right ones, or that if every visible animal is rational, man is.²⁰

Thus Bentham defined demonstration as satisfaction or a 'quiescent feel of the mind' about the quality and quantity of knowledge determining a man's actions. Here as in all human experience there was a scale with infinite gradations, ranging from complete dissatisfaction to perfect satisfaction. Mathematical truth was perfectly satisfying, but demonstrations based more obviously on human testimony fluctuated widely. Under this flexible definition almost all knowledge was in some degree demonstrable, including the science of morals and legislation.

But if Locke's rigid definition were enforced, no knowledge was demonstrable; for all knowledge, even mathematics, is ultimately based on human testimony. Bentham said:

If men in their speculations concerning the Moral Sciences think ever to get clear of the testimony of other men as a part of their foundations, much more of the testimony of their own senses, and this is what they mean by demonstration, they will find themselves mistaken²¹

He elaborated elsewhere:

Mathematical propositions have no other certainty than what belongs to the conclusions of sense: for they are themselves derived from those conclusions: the only advantage they have is that . . . [their] ideas are taken from those objects of sense which can afford conclusions . . . under circumstances in which they are least liable

to error. A mathematician takes his abstract ideas of a line and a circle from the most perfect line and circle he ever saw . . . and if in these he sees any defects . . . he may make his ideal line and circle . . . by resolving not to suppose them to exist; and finally he may free them from all possible imperfections by saying to himself, if there be any behind, which I cannot see . . . I will suppose them out of the case. . . .

Thus it is that he purifies his ideas of all the imperfections which existed in the impressions of which they were copies.

To say then with Montesquieu, that it was always true that the three angles of a triangle were equal to two right ones before there were any persons to think about their equality, is to say that there were ideas, that is thoughts, before there were thinking persons.²²

There was, therefore, no sharp dualism between demonstrable and non-demonstrable propositions, as there was none between art and science, doing and knowing, action and thought. The feeling of satisfaction called 'demonstration' was a psychological bridge between knowing and doing. In this sense, Bentham certainly believed that his new art-and-science, based on the normative principle of utility and its inseparable lists of reasons, was more fully demonstrable than any other theory of morals yet devised. Indeed, his great ambition was to make Utilitarianism as nearly perfectly demonstrable as mathematics. How did he attempt to do it? By transferring the science of number to legislation. The more that psychological and social phenomena could be exactly measured, the more that pleasures and pains could be given numerical equivalents, the more satisfying Utilitarianism would be, until it verged on complete mental quiescence. But the doctrines of utility were not demonstrable as geometry was;* their deductions were arithmetical and algebraical.

Next to medicine, number was the science most nearly analogous and relevant to Utilitarianism. But unlike medicine, the science of number could be directly applied to legislation.

Call the species of misery produced by any one action in a single person, x , and that produced by another, y . Now whether x or y be the greater, is matter of conjecture and opinion, but that $x + y$ is greater than either x or y alone, is matter of demonstration.

Again let n stand for the number of persons subjected to the species

* As Mill implied in *A System of Logic*.

of misery $x + y$, and let such number be supposed double in the latter case to what it is in the first.

Now whether nx or ny be the greater while x and y continue indeterminate is still matter of conjecture and opinion: but that nx is in any case greater than x alone: and that if x and y be supposed equal, $n(x + y)$ is greater *viz.*: that it is double to nx , this is matter of demonstration. In this manner it is matter of demonstration that Robbery is worse than Theft.

Quantity and number are the province of mathematics. . . .

Figure or the local position of parts with respect to each other is out of the question. It is only the very first principles of mathematics that have anything here to do. And as figure is out of the question, nothing that belongs to geometry need be introduced.

Arithmetic and algebra are those branches of the Mathematics from which the several principles that are requisite will be drawn.²³

If legislation were ever to become fully demonstrable and persuasive, it must include a science of number. Throughout his entire life, throughout all the different branches of law, Bentham tried to apply mathematics to morals and legislation: in private substantive law, with attempts to find money equivalents for pleasures and pains; in procedure, by efforts to fix a scale of the probative value of different kinds of evidence; and in private and constitutional law, by considering the numbers of people affected as one test of right and wrong.

All of Bentham's ideas have at times been brutally oversimplified, but perhaps none so regularly as his view of the relationship between mathematics and legislation. Why has the mistaken association with geometry, begun by J. S. Mill, never been questioned?

Here the sins of the children are visited upon their father, for the disciple James Mill had the rationalist, reductionist, deductive, and 'geometric' mind that his son John attributed to Bentham. It was all the easier for John to assume that 'geometric' Utilitarianism bred inflexible 'geometric' personalities because he never saw Bentham's arcane papers on scientific method. Nor of course did later critics see them. They took Mill's words on trust.

And Bentham certainly allowed them room for misunderstanding. He himself called his most important principles 'axioms'*. 'A rule is a *proposition* . . . a *principle* is but a *term* . . .

* See for example his 'Axioms of Mental Pathology'. I agree with Doctor Stark in considering them 'one of the central pieces and prime achievements of . . . [Bentham's] mind'. (*Op. cit.*, I, 20). Continually dissatisfied,

an abridgement of the corresponding rule.'²⁴ An axiom was an especially useful rule or important principle because of its incontestability, comprehensiveness, and clarity. But his axioms were not the self-evident principles of geometry. They were empirical generalizations, made to serve as hypothetical prudential rules for the legislator.

If Utilitarianism is not geometrical, how is it arithmetical and algebraical? Bentham's theory of legislation and mathematics are related on two levels: directly by using the techniques of elementary arithmetic, weighing, adding, and balancing pleasures and pains; and by suggestive analogy with higher branches like algebra. Beginning at the simplest level by numbering, establishing rough equivalents, adding, and subtracting, Bentham foresaw a future science of legislation whose history paralleled the history of mathematics. Might not legislation follow the same pattern of growing complexity from the analysis of one and two-term relations through dyadic and triadic to the infinite? Might not a sophisticated Utilitarianism include a differential calculus that could account for the rates of change of variable social functions? After all, Bentham liked to point out, 'Newton did almost everything by one new word – "Fluxions" – he introduced a new element – the element of motion.'²⁵

Beyond legislation, he imagined an ultimate synthesis of logic and mathematics, a unified symbolic logic or 'universal grammar' that gave the form of all human activity. He asked, 'Why should not all intellectual ideas be communicated by figures, – as musical ideas are by notes, and arithmetical by cyphers?'²⁶

Bentham's vision of the possibilities was grand but blurred, for he never had a public opportunity to focus it. Once again, the development of his thought depended first of all on an accepted new neutral dictionary, and his neologisms were ignored. These words were to play the same role in his science of higher legislation as numbers do in algebra: intellectual shorthand. Highly concentrated abstract symbolism enabled men to say and

Bentham hammered out many such lists of axioms, reducing and refining them until they met his standards of brevity and precision. They can be found most fully developed in *Pannomial Fragments*, III, 224–30, but also in his early unpublished writings, the early *Principles of the Civil Code*, I, and his last work, the *Constitutional Code*, IX.

do long complex things tersely and simply, things otherwise closed to them entirely or too laborious to undertake. How much did mathematical progress owe to the replacement of Roman by Arabic numerals! In 1831, at the age of eighty-three, Bentham drew up an outline for a new essay on the logic of the will. Once again he indicated the analogy between algebra and creative social thought.

23. Conciseness – men not as yet sufficiently aware of its efficiency.
24. By this instrument the wonders of algebra performed.
25. In numbers a great advance by Romans in substituting numerals to words – still greater by the Arabians in the decimal mode of notation.
26. Arithmetical notation a condensing engine. By algebraic mode a still further condensation effected.²⁷

In this way, as Bentham tirelessly repeated, language was not only an instrument of thought but could become an instrument of creative invention as well.²⁸ He offered an Axiom:

Employ abbreviative words: any such word, explained once for all, if need be by definition, performs in legal language the functions of x and y in algebra. Examples: Maximize, minimize, demoralize, disintellectualize, eulogistic, dyslogistic, and the names of functions.²⁹

How far did Bentham's enthusiastic commitment to mathematical methods commit him to deduction? Was he a 'rationalist'? Certainly there are many deductive elements in Utilitarianism, as there are in every science or system of organized knowledge. Lesser quantities can always be deduced from greater; particular propositions from general ones. Certainly one of Bentham's great ideals was a science of legislation as demonstrable as mathematics. However, he had no illusions about either the practical possibilities or the size of his own small contributions. Until a science of social statistics was developed, the only area of legislation that might become deductive was private civil and penal law. This was one reason why, after every tentative foray into constitutional law, economics, religion, education, and international law, Bentham always returned with relief to the secure ground he knew best – private offences and punishments, procedure and evidence. As a deductive system, the Utilitarian code of civil and penal law presupposed a complete classification by genus and species, of

offences and punishments, all defined in terms of pleasures and pains, and the establishment of a rough equivalence between them. By arranging like things under like things, true propositions could be deduced. This was the work of definition and this is why, before Bentham attempted anything else, he made a dictionary.

He was proud of his analyses and claimed that 'no scheme of classification was to be found in use, of the primary classes of which, propositions completely true could in anything like an equal number . . . be applied.'³⁰ These true propositions followed by simple *modus ponens*, thus: all theft (defined) of X (general class) is punishable (defined) by Y; Z is an X; therefore Z is punishable by Y.

If a rationalist is defined simply as a theorist who tries to organize his given subject matter deductively or who sees reason as an empirical process, then Bentham is emphatically a rationalist. He not only classified all phenomena by genus and species under an all-comprehensive Encyclopedical Tree and tried to give all measurable things numerical equivalents, but he also defined every word by the classical contradictory formula, that is, by 'exhaustive bifurcation'. This kind of rationalism is harmless and may be useful.

But when critics fire charges of 'rationalism' at Bentham, they mean something more invidious and damaging. They imply that he had unbounded faith in human reason and that he reasoned *a priori* from universal laws.³¹ In this derogatory sense, Bentham was not a rationalist at all. He was not committed exclusively to the deductive method but adapted himself flexibly, employing every method that seemed useful – induction, deduction, analysis, synthesis, observation, and experiment. As we know, his principles were not laws, but opinions. His 'reasons' were never *a priori* but always pragmatic. 'By a reason for any act,' he said, 'is conveyed the idea of its supposed addition, actual or probable, to the greatest happiness.'³² A man is as intelligent, then, as his conception of general utility is clear. As this kind of Utilitarian 'rationalist', Bentham hoped to become the ruler of the universe. He exulted in a characteristic short-lived burst of whimsical braggadocio:

I have formed a plan of universal conquest. I intend to govern all the nations in the habitable globe after my death – With what weapons?

With rhetoric? With fine speeches? With prohibitive and irritant clauses? – No: but with reasons, with a chain of . . . articulate and connected reasons, all depending upon one principle.³³

Once again Bentham left room for misunderstanding. Though he usually overflowed with neologisms, his invention ran dry here and he retained the word 'reason', fully aware of its many emotive ambiguities. He admitted:

The word *Reason* is, of itself, sufficient to involve the whole subject in a cloud . . . *Memory* and *Imagination* . . . [are the words of] the Logicians. . . . In the word *Reason* . . . the *Rhetorician* and the *Poet* . . . have joined in giving us a sort of goddess . . . in whom another goddess, *Passion*, finds a constant antagonist. . . .³⁴

Of these two kinds of rationalism, damaging or epistemological and harmless or formal, Bentham rejected the first absolutely and adopted the second – but not without a stream of warnings against its potential dangers. Eventually even he tired of insisting that exhaustive bifurcations were not substantial definitions but merely verbal conveniences. He concluded in 1815:

Once more, and for the last time – it is only in the character of a *provisional* thesis that this *general* formulary is presented. In *observation* and *experiment* – . . . having for their subjects *individual* objects . . . are the only *original*, and . . . the only *definitive* tests to be found.³⁵

'Approximation' and 'preponderance' were two of his favourite words. Again and again he insisted that though names are distinct the things they name often are not, and that the structure of language gives an artificial sharpness and definiteness to everything we say. All so-called 'universal laws', then, are more-or-less true generalizations. This was an 'undeniable' and 'it is believed to be irremediable' imperfection. He continued, 'Approximation is, throughout, the utmost that can be hoped for.'³⁶ Even in their limited role as empirical generalizations, Bentham cautioned against limitless and unquestioning attachment to 'principles'. He defined 'prejudice', for example, as this kind of indiscriminate attachment.*

* Hutcheson, *Economic Journal*, *op. cit.*, p. 304. With rare understanding of Bentham's method, Hutcheson says, 'His economic theorizing, in fact, is of an

In an early essay he showed his definition of reason in use. Reason, he said:

is matter of fact; the truth of which rests upon experience. When I say, the custom in Parents of providing sustenance for their children is a useful custom . . . or what comes to the same thing, when I give the mischief of not observing it as a reason for blaming the non-observance of it, I assert a matter of fact . . . and call in experience to witness. I allege [sic] the existence of certain pains and pleasures . . . felt not by any new-discover'd moral sense, sole property of the discoverers: but by the old stock of sense, such as all men have, and all men know of.³⁷

For what was experience witness? What Utilitarian purpose did the collection of past matters of fact serve? It was the foundation of prophecy. Judgments of utility were estimates of future probabilities, based on analogy with past experience. They were guesses that time alone could vindicate.

The footing on which . . . [Utility] rests every dispute, is that of . . . future fact – the probability of certain future contingencies. [Under Utility] . . . one of two things would happen: either men would come to an agreement concerning that probability, or they could see at length, after due discussion of the real grounds of the dispute, that no agreement was to be hoped for. They would, at any rate, see clearly and explicitly the point on which the disagreement turned. . . . The question is now manifestly a conjecture concerning so many future contingent matters of fact: to solve it, both parties then are naturally directed to support their respective persuasions by the only evidence the nature of the case admits of; – the evidence of such *past* matters of fact as appear to be analogous to those contingent *future*.³⁸

Here is the heart of Bentham's scientific method: analogy. Analogy is a relation of likeness between two things in one or more of their parts. As a working method, it is the adaptation of familiar situations to new ones, scoring their points of resemblance and difference, and testing the inference that things similar in some respects may be similar in others. All events are

exactly opposite pattern to that typical of the neo-classicals. It is *not* mainly abstract, deductive, and "micro-economic" . . . but on the contrary, is rather practical, "macro-economic" . . . and . . . concerned to exploit such crude statistics as were available . . . ' (p. 290).

discrete; therefore there are no perfect analogies. They are only relatively suggestive and pertinent, but they are absolutely indispensable to scientific advance. Bentham offered this insight in endless variety – early and late, clearly and dimly, tersely and long-windedly, as an axiom and in detail.

As early as *The Principles of Morals* he said:

It is necessary to meditate upon what has been successfully accomplished in one kind, to learn how to conquer difficulties in another. By investigating the cause of success in particular cases, we may rise to general rules.³⁹

In 1815 he offered the same insight translated into later Benthamese:

Scarce will the *art* be found, from which, through the medium of *Analogy*, assistance may not . . . be borrowed . . . by every other.

By *Analogy*, scarce will the article of *knowledge* be found, by which . . . *light* may not be received from . . . every other.⁴⁰

This was so vital an insight that Bentham included it not once but twice in his list of Axioms or Instruments of Invention. He offered it both as Latin mottoes and in English. '*Quodlibet cum quolibet*,' he intoned over and over again, 'To everything forget not to apply anything.'⁴¹ Then he added, 'For means and instruments, employ analogy. *Analogias undique indagato*.'⁴²

There were at least two levels of analogy, simple and complex. Among the seventeen operations of the mind Bentham listed 'observation of analogies' or simple abstraction, analysis, and comparison. Later he added 'analogization or analogoscopy' as a specific more sophisticated branch. Why? Because 'so powerful and perhaps indispensable an instrument is . . . [analogy] in the hand of *Invention*, – that a separate denomination would . . . be not ill bestowed upon it.'⁴³

Analogy is indeed the heart of Bentham's scientific method, but a method is worth only as much as the art it serves. Its value as a means is proportionate to its Utilitarian end. And what was this end? It was creative invention, a living dynamic force that could and must drive a bad mouldy past into a good, fresh, Utilitarian future. Invention was the dynamic bridge between *is* and *ought*, and the intensity of Bentham's focus on it cannot be exaggerated. 'What is genius?' his father and Dr Markham had

asked a puzzled child. When he read Helvétius in 1769, a fateful insight burst upon him: genius meant invention. This was the decisive shaping question-and-answer of Bentham's entire life and thought. It determined not only his own dedication but the whole vast structure of Utilitarianism, for if analogy was a key means to the end of creative invention, creative invention was the key means to the ultimate end, the greatest happiness of the greatest number.

When Utilitarianism is seen from this perspective, as a process of creative invention, it is radically transformed. It is no longer a stale or dead science with a fixed body of academic, rationalistic, mechanistic, 'universal' doctrines, arrogantly issued by a fussy quaint pedant. It becomes a live, dynamic, relevant method, analogous to the best contemporary scientific procedure, modestly offered by a sensitive and sensible man as a practical way to make the dark heavy lives of men a little brighter and lighter.

If creative invention and the principle of utility are the ultimate means and end of Bentham's system, even the logic of the will takes a subordinate place. Like the Encyclopedical Tree with its elaborate divisions and sub-divisions into genera and species and Bentham's series of neologisms, volitional logic was not the pointless whimsy of a system-mad eccentric but an instrument of invention. Bentham was sure that the first condition of effective invention is systematic order, and that very often method alone suggests new and valuable analogies and combinations, as algebraical symbolism sped mathematical advance.

In his vocabulary, 'method', 'theory', 'logic', 'classification and nomenclature' are nearly synonymous.

In the whole field of the art of Logic, so large is the portion occupied by the art of methodization . . . that the task of showing what it . . . can do, is scarcely distinguishable from the task of showing what . . . Logic can . . . do.⁴⁴

What, then, can Logic do? What are its limits? How does it act as an instrument of invention? Under the logic of the will, Bentham wanted to lay out the entire range of human experience in an orderly, interrelated, graphic way, so that it might become:

a sort of *novum organum* in miniature. . . . A Table of this sort may be considered as an instrument in the hand of *Analogy*. . . . Conception, retention, combination, generalization, analysis, distribution, comparison, methodization, invention, – for all or any of these purposes with an Encyclopedical tree in his hand . . . skipping backwards and forwards . . . from twig to twig . . . hunting out whatsoever analogies it appears to afford, the eye of the artist or of the man of science may, at pleasure, make its profit. . . .⁴⁵

As an instrument of invention, logic is limited only by the fruitfulness of the analogies it suggests. It is always a servant of invention, never an end in itself.

Observation and *experiment*, – in these . . . may be seen the only sources of all real knowledge. . . . Of *Logic* . . . all that it is in the power to do is, to arrange and display in the most instructive manner whatsoever matters have been extracted from these sources. What it can do is, *to methodize*; and in that unimmediate way *promote creation*: – what it can *not* do is, *to create*.⁴⁶

What are the conditions of creative invention? Is it possible to define and guarantee them all? No. Bentham was not so simple-minded. A great, delicate, personal, unique experience could not be reduced to a mechanical formula, and he did not attempt it. Method and analogy had in fact been the two chief instruments of invention in the natural and physical sciences, but their particular combination was often a happy accident. Invention depends on three things: method, analogy, and chance.

Great . . . is the assistance which . . . invention has already drawn [from methodization] – still greater, perhaps, the assistance which it may yet be capable of deriving. Yet, it is not by methodization alone that what has been performed . . . has been performed. To chance and to analogy great, also, have been its debts: it has received much favour and assistance from this or that single and insulated analogy presented in some happy moment, by the hand of chance.⁴⁷

All the same, in 1814 after almost half a century of experience as a 'projector' or inventor, Bentham drew up a list of 'Mementos' of 'Helps to All' for stimulating creative effort.⁴⁸ Though his hints were rather obvious – for example, keep the end in view; look for the fittest means – the purpose behind them, of isolating

creative invention as the key element of a progressive political science, was highly original and important.*

It was also a limp objective conclusion of a long, feverish, painful chapter of Bentham's personal history. These hints, like the *Deontology*, were intended as the same kind of popular primer as Erasmus' *Colloquies*, and they were related to Bentham's more esoteric writings on logic and scientific method as his deontological sayings were related to his analytic psychology and ethics. Unlike his other writings with their two histories, the second an extension or fulfilment of the first, doing here preceded knowing. Bentham was a frustrated inventor or 'projector' for many decades before he described his methods. In the beginning he had been preoccupied with his own 'projects' and the creation of the right kind of social atmosphere for effective invention. He had seen the problem as legislative rather than psychological. It had thus taken its place in the logic of the will as a branch of the rationale of reward, itself one of Bentham's most original inventions.

He asked, what can government do to stimulate original thought? His answer was shaped by the conditions he found at hand. As his favourite medical analogy was suggested by the rapid progress of medical science, so a relation between invention and reward was suggested by the common eighteenth-century custom of public prizes. Indeed, Bentham wrote many of the pages later incorporated in *The Principles of Morals* as an entry for the 1779 Bern Code Prize.

Considering his failure as a 'projector', Bentham's words about the connection between reward, hope, and creation are poignant.

It is the property of hope, one of the modifications of joy, to put a man . . . into spirits; that is, to increase the rapidity with which the ideas he is conversant about succeed each other, and thus to strengthen his powers of combination and invention, by presenting to him a greater variety of objects. . . . [He] discovers within himself resources of which he had hitherto been ignorant.⁴⁹

* Its importance has been rediscovered by such diverse political theorists as Graham Wallas and Bertrand de Jouvenel. About as unBenthamic as it is possible to be, de Jouvenel yet agrees, 'I believe that the figure upon which Political Science should focus its attention is the Initiator, the Promoter, and that the chief problem of the science is to study the conditions of dynamic balance between the driving forces and the adjusting factors.' *Sovereignty, op. cit.*, p. 298.

Hopeless and miserable as Bentham often was, his 'powers of combination' were only rarely affected. Invention by analogy was as habitual with him as 'post-prandial circumgyration', and examples of it crop up everywhere in the Utilitarian system. He indicated analogies not only between Utilitarianism and chemistry, arithmetic, algebra, and medicine, but circumnavigation (because legislation also covers the entire globe) and architecture (because the logic of the will is also an articulated structure) as well. We have seen that classical logic suggested many parallels, and his 'conjectural history of language' was confirmed by the habits of primitive tribes.

If analogy is a centre of Bentham's thought, his 'rationalism' falls into a harmless place on the periphery and history moves forward to a newly prominent position. In morals and legislation analogies must inevitably be grounded on shorter or longer series of recorded human acts. These obviously are 'history'. If experience and observation are essentials of Bentham's scientific method, he was perforce historically-minded. His attitude toward history is far less contemptuous and more complex than is usually supposed.

How did Bentham use historical examples? In his hands they became 'reasons', or supports of past experience for the weight of social prophecies. He used them directly whenever they seemed relevant, and indirectly too. One of his favourite methods may be called 'negative analogy'. He often recommended novel social programmes with no significant precedents or analogies. As 'reasons', he listed the evils of non-observance instead.

Important as analogy is in Bentham's thought, his focus on it was neither clear nor deep. Perhaps it could not have been. Only in our time has the vital role of analogy in scientific advance been generally acknowledged and understood. J. Robert Oppenheimer speaks for his colleagues, 'This use of analogy . . . seems essential to the progress of understanding.'⁵⁰ Bentham gave the subject a new twist by asking, what is the place of analogy in the social sciences? He saw the wonderful challenge it offered but it cannot be said that he met it. Nor has anyone else. It is still a fresh and urgent problem.

Bentham's one question opened a flood of others. In analogy as elsewhere, there are degrees of more and less. What kinds of analogy are more persuasive than others? Those from near fields? Or those from distant? Has the recent progress in

medicine and mathematics distorted their former relevance for morals and legislation? Can there be reliable rules for moral and political analogy?

Bentham was more particularly concerned with the relation between legal precedents and analogy. Disturbed by the evil effects of strict precedent in law, he hoped to broaden the range of pertinent historical examples from many areas of human activity. As a scientific method, Utilitarianism was a process of creative social invention. But Bentham was deeply sensitive to the inertial forces of habit and recognized the frivolity of abruptly replacing revered customs with raw novelties, no matter how apparently superior. His concern with social analogy was therefore practical. How could the new be made to seem old?

Maps, Models, and Middle-level Laws.

Though Bentham began to evolve his doctrines and methods almost two centuries ago, his purpose is only now becoming fully intelligible, by analogy with the methods of contemporary science. Quietly and obscurely, he began to develop techniques that have only recently been adequately described by philosophers of science and practising scientists.

The parallels between Utilitarianism and the methods of modern science are not exhausted by their mutual emphasis on analogy and creative invention. Both loyally follow the classically successful practice of exact nomenclature and measurement and the time-honoured insight that new names may suggest new ideas. This treasured Benthamic chestnut has recently been repeated by Stuart Hampshire: 'The demand for exactness of statement will by itself lead to amazing results.'⁵¹

On their simplest levels some sciences, like zoology and botany, are 'natural histories'. They are collections of habit-statements or 'descriptive' sciences.⁵² On the highest level of abstraction or sophistication, a science like physics makes 'nature-statements' and is not 'descriptive' but 'explanatory'.⁵³ Bentham's new science of morals and legislation is neither exclusively descriptive nor explanatory. It is both, a complex pragmatic mixture that might best be called 'therapeutic', a future preventive science analogous to preventive medicine.

Utilitarianism begins as 'natural history' or, as Bentham said, by 'primaeval analysis' or 'a collection of raw materials'.⁵⁴ It

moves upward to different levels of 'synthesis' or generalization, and on to '*scientific* analysis', tested by 'distinctness and all-comprehensiveness'.⁵⁵

In the science of morals and legislation this initial necessary 'collection of raw materials' was made up of social facts and statistics, and we know how crippled Bentham was in his struggles to assemble them. Perhaps a few details might be added to the story. Utilitarianism as a logic of the will is not a natural history: it assumes one. Facts are its materials of course, but Bentham was not interested merely in collecting, listing, and describing them. His approach had to be and was immediately analytic. Given a random accumulation of phenomena, which ones are significant? How and why?

Analysis was forced upon him at once because he was not an explorer in virgin territory but a bewildered observer of the vast overgrown field of law, so crowded with precedent and cross-hatched with 'interpretation' that he had to clear his own way through it. It is therefore impossible to separate the explanatory from the descriptive parts of Bentham's new science. His most powerful and exhaustive analyses and explanations can be found in his studies of procedure and evidence. The English system was so barbarous a chaos of writs, pleading, demurrers, and surrejoinders that he had to devise his own clear, simple, and comprehensive system for collecting legal information. This he called the 'natural mode', as opposed to the established 'technical mode'.

This new mode had two objects, both the judge's concern. If he is to administer justice, he must first hear and assess all the facts alleged on both sides. Then he must decide whether and what existing law is a relevant precedent. To achieve these ends Bentham offered 'the fundamental principles of natural procedure'. Some of them are:

1. Publicity maximized.
2. Exclusion of middle-man maximized.
3. Initiatory applications, not epistolary, but oral, maximized.
4. Penal security against falsity universalized. . . .
5. No one made defendant, but on determinate and substantial grounds.⁵⁶

If private law was a chaos, it was at least a factual chaos. Procedure and evidence were among the few areas of Bentham's

interest that offered him a ready-made collection of empirical materials, accumulated over centuries in case books and daily engraved in acid on his heart. Because procedure and evidence had so full and secure a 'descriptive' foundation, he built his most articulated and polished 'explanatory' rules and principles upon it. The value of his scientific method is as the value of *The Rationale of Evidence*, his most complete performance.

Bentham's 'explanatory' principles are analogous to 'laws of nature' in modern physics, qualified by his humility and subtlety. As a fixed body of doctrine, a science of law was impossible. It would presuppose an order of casual relations in human affairs, and this men had not yet made. In *The Rationale of Evidence* Bentham conceded:

To trace the connexion between the several principal facts . . . and the several evidentiary facts . . . related to them . . . would be . . . and endless task. . . .

Hitherto . . . judging . . . the degree of connexion . . . has been an operation of the instinctive class. . . . To take the business out of the hands of instinct, to subject it to rules, is a task which . . . must . . . be reserved . . . for the improved powers of some maturer age.⁵⁷

But the laws of modern physics and the principle of utility are explanatory in the same way. They offer new models, diagrams, maps, and charts for representing familiar phenomena, so that their scope and power of application are vastly multiplied. They are neither empirical generalizations nor deductive statements simply, but formal techniques of discovery and explanation. In Toulmin's fine epigram, 'Natural historians . . . look for regularities of given forms; but physicists seek the form of given regularities.'⁵⁸

The map and model metaphors are not idle figures of speech. They are genuinely helpful in understanding not only the techniques of modern physics and Utilitarianism but their close relationship. Bentham and the modern physicist are cartographers and engineers. They regard their 'objects of study as articulated structures'.⁵⁹ In both disciplines discovery is double: it includes the development of techniques of representation that fit a wide range of facts, and the adoption of new models of maps.

Bentham offered his logic of the will as a perfect model or ideal. In the preface to the 1779 Bern Prize Code he declared:

To explain the several parts of the great machine of government, the mode of its action, the manner of its operation, a model should be constructed in which the essential parts may be taken to pieces and . . . distinctly shew a system which though nowhere actually carried into execution, partly by reason of its very perfection, would however . . . serve as a model by reference to which the less perfect systems that are actually . . . established might be explained.⁶⁰

Like the physicists' models, Bentham's 'articulated structures' were hypothetical systems of 'as if' statements. 'Systems which are not in fact articulated structures,' Toulmin points out, 'are just those that [the physicist] . . . has to *regard as* articulated structures.'⁶¹ Human events are indeed unique, infinite, chaotic; but if man shall ever control them, he must imagine and order them as parts of a logic of the will.

If the value of these systems lies in their explanatory power, it is wrong to ask, are they true or false? The proper question is, do they hold? To what use can they be put? To quote Toulmin again, 'To think that A *is* B is one thing; to think of A *as* B is another.'⁶² Like the physicist, Bentham sought the *form* and the *scope* of given regularities, not their truth or falsity. He spoke of 'fields' of action or reference as Toulmin speaks of laws of nature as helping us to 'find our way around' or describing a place on a map.

The principles of utility, like the laws of physics, are instructions, directions, rules of behaviour, and they are 'parasitic' on their uses and techniques. The man who understands them has not learned a verbal formula but a practical procedure, and their claims to superiority must lie in their demonstrably greater range and simplicity of explanation. Like Bridgeman's theory of the concept, Utilitarianism is operational. It is what it does or can do. When Bentham defined the 'faculties' of the mind, he listed seventeen mental activities or 'operations'. 'So many operations, so many faculties,' he said, 'corresponding to each operation, a faculty considered and spoken of as if enabling a man to perform that same operation.'⁶³

Bentham offered Utilitarianism as the same kind of better alternative to current moral sense and natural rights theories as Lavoisier's hypotheses were given as improvements on the phlogiston theory. In both cases clarity and economy were substituted for confusion. In neither case was formal truth an issue.⁶⁴

Like physical laws, the principles of utility are stratified. They move up the same hierarchy, in a series from elementary 'phenomenological' through intermediate or middle-level to the most abstract laws.⁶⁵ Utilitarianism begins with the primeval phenomenological elements of pleasure and pain and their relevant rules and principles of individual psychology. Some examples are the calculus as far as it applies to private pleasures and pains, and the Table of the Springs of Action.⁶⁶ It ends of course with the all-inclusive Greatest Happiness Principle. The enormous range between them, between what *is* and what *ought to be*, was filled by a vast structure of middle-level laws in an ever-ascending order of abstraction and complexity. To trace these principles to the very bottom in all their countless ramifications and refinements was, as we have seen, Bentham's great but superhuman ambition.

Let us look at two of his most nearly complete examples. We know that, after the Greatest Happiness, the highest principles of the system were those related to security, subsistence abundance, and equality. A man in a hurry, Bentham barely paused to justify their prominence. Like the principle of utility they were both descriptive and normative. As the rationale of the Greatest Happiness principle, Bentham appealed to every man's immediate subjective experience of pleasures and pains. But this appeal was weak for the subordinate principles, for the words 'security, equality, subsistence, and abundance' are too abstract and ambiguous to be directly persuasive. At least once he attempted to ground them empirically, by claiming that all governments do in fact aim at these four subordinate ends. In 1814 he said:

It will be found that . . . in all systems, the very worst not excepted . . . in fact the laws have no other objects . . . but which, short as it is, are comprehended in this list; and that in all bodies of law, the great and constant difficulty is . . . to decide to which of them the greatest portion of favour is due. . . .⁶⁷

Among these ends, security was supreme, for it alone had a time dimension. Bentham defined security as settled grounds of expectation. Because the greatest pains are disappointed expectations, he called his first subordinate axiom the 'Disappointment preventive, or say *Non-disappointment principle*.'⁶⁸

The axioms of security therefore are the first and fundamental middle-level laws in Bentham's system, and among them those related to language have priority, for without fixed rules of communication there can be no security of any kind. As we know, Bentham saw the entire history of law and civilization as a haphazard search for security, and government as the institution that led man from the state of nature by establishing his expectations, by guaranteeing the fruits of his long-range efforts. This supremely important principle was the rationale behind Bentham's entire code of indirect or transcendental legislation.

Applying it to language and law simultaneously, he formulated an intermediate middle-level axiom; let all laws be codified. Trace the evil effects of insecure legal language far enough, they lead to class antagonism and social oppression. Trace the potential blessings of unambiguous and codified law far enough, they will lead to genuine legal equality. As long as Englishmen were forced to hire professionals to expound the mysteries of law, they must remain dependent and uncertain.

As laws can afford no security . . . any farther than the words of which they consist are faithfully interpreted and observed, by perverting the import of words [the law] . . . undermines and destroys . . . security. . . .⁶⁹

The particular laws of Bentham's codes correspond to the lowest-level 'phenomenological' laws of nature.

Bentham combined the non-disappointment principle and other middle-level laws like the calculus, the doctrine of sanctions and pathological axioms to form an endless series of subordinate combinations and permutations. In this way his later theory of democracy may be seen as the 'phenomenological' result of such a union. He joined the non-disappointment principle and the most important branch of the calculus, the doctrine of the orders of evil, and drew the conclusion. The first subordinate end of good government is internal and external security, but what is the greatest threat to internal security? The government itself, for its officials were so many potential 'internal official irresistible adversaries.'

Of the danger to which an assemblage of individuals stands exposed, the *magnitude* will be as the joint ratio of the *intensity* . . . the *duration* . . . the *propinquity* . . . the *extent* . . . as measured by the *number*

of those who stand exposed to it. Measuring it in every one of those dimensions, minute will be seen to be the danger to which the other members of the community stand exposed at the hands of . . . their resistible, in comparison with . . . their irresistible adversaries. In the first case, it has place on . . . an individual scale; in the other, on a national scale.⁷⁰

But in procedure and evidence alone, Bentham came closest to his ideal of a fully articulated system of middle-level laws, in which the most general axioms ultimately lead by fine natural steps to particular practical recommendations. This was so not only because procedure and evidence offered him the strongest empirical foundation but also because they are logically prior. Good substantive law presupposes good adjective law.

According to Bentham, the direct end of procedure was correct decision, and the indirect, the exclusion of needless delay, expense, and vexation.⁷¹ From these intermediate-level laws, what 'phenomenological' propositions followed? This 'fundamental rule', for example: 'Burthen of costs minimized.'⁷² The irreducible costs of all law suits should therefore be assumed by government out of 'The Equal Justice Fund'.⁷³ For those who were poor or helpless, the judge must appoint an official 'Eleemosynary Advocate'.⁷⁴ By whom and in what proportion the remaining costs should be paid the judge must decide, first, according to the guilt of the litigant and, second, according to his wealth. For it was another 'fundamental rule' that:

it is necessary that the pecuniary burthen should be assessed in a larger proportion on the richer, than on the less rich: that proportion being directly in the ratio of the quantum of the matter of wealth possessed by them respectively.⁷⁵

In this same way Bentham derived hundreds of particular 'phenomenological' laws of legal reform, immediately from intermediate laws, then from the first subordinate security principle, and finally from the all-comprehensive principle of utility itself. It might be asked, could the particular propositions related to legal expense have been traced just as easily from the principle of equality? Yes, surely, for the Utilitarian system is all of a piece, and the whole fabric of middle-level rules and principles might as well be woven from the bottom up, synthetically from the pre-scientific descriptive facts of human pleasures

and pains, as from the top down, analytically from the normative greatest happiness principle. All four subordinate ends of government – security, subsistence, abundance, and equality – are based on the Axioms of Moral Pathology.⁷⁶

In the Utilitarian hierarchy, the inequality-minimizing principle ranked immediately below the disappointment-prevention principle. As early as 1776 Bentham proclaimed:

Whatever quantity of pleasure an instrument of pleasure produces in any man, the same quantity must the same instrument be supposed to produce in any other man, where no reason for a difference can be assigned.⁷⁷

For a second example of his working method, let us see how he derived and applied 'phenomenological' laws from the abstract equality principle.

Given this principle, what assumptions about money would the Utilitarian legislator find it useful to make? Two people have different amounts of money; each particle of it represents a particle of happiness. Who is happier? All else aside, he who has more. But there is a law of diminishing returns. Happiness does not increase in direct proportion to wealth but in ever smaller amounts. The same gift of ten pounds may seem miraculous to a poor man and negligible to a rich one. In reverse, an equal tax may cause grievous suffering among the poor and go unnoticed by the rich.

What followed from these hypotheses? First and obviously, proportional taxation. Second, a national high wages policy. The poorer working classes had first claim on an increase in the national income. It followed, third, that stock dividends should be minimized and corporate profits largely distributed as wage increases.⁷⁸

Bentham's later theory of democracy is no less implicit in the inequality-minimizing principle than it was in the principle of security. In a sense, equalitarianism is implicit in all general laws and not Benthamic axioms alone. They are all intended to hold equally for those who come within their compass, the Codes of Hammurabi and Justinian as well as the American Constitution. Bentham tried to go beyond this implied surface equalitarianism by grounding it firmly on universal pleasures and pains, the psychological 'pathology' common to all men.

Why was Bentham so slow to draw the democratic implications? Why was it 1790 before he became a democrat? The reason is almost too simple. He worked out his analyses as problems of 'pure' science within the confines of his technical specialties, procedure and evidence, civil and penal law. Gradually his horizons widened and he applied his 'middle-level laws' in every direction. When he finally brought the inequality minimizing principle to bear on problems of political power, he became a democrat. He discovered that power as well as money is a measure of happiness. In his pathology, pain outweighs pleasures, so that a ruler's pleasure in exercising pure power, that is, without a corresponding pain of public obligation, could never equal the pain of political subjection. Therefore let power and obligation be joined, and let every man share it

For all the analogies between modern physics and Utilitarianism – and they are many and suggestive – they have a limit. They are systems of 'organized common sense',⁷⁹ using new language and mathematics to express general ideas clearly and simply. They are explanatory and offer ideal maps or models that indicate their scope of application. Their laws have levels of abstraction, varying from 'phenomenological' to the most general. Yet even within these similarities there are many differences, for physics *is* a science, an accepted body of organized knowledge, and Utilitarianism is not. It is an heroic but ultimately unsuccessful effort to become one. How and why did it fail?

We know one answer already. The science of utility was never finished and never tested in use because Bentham could never guarantee even the first condition – a new dictionary. In other sciences language grows naturally, semi-consciously, even unconsciously. When scientists meet a new phenomenon that calls for a new name, they offer one, and expect and receive public acceptance and use. In Bentham's smug self-satisfied eighteenth-century England there was no demand for a new language of morals and legislation. He was forced to create a new vocabulary artificially and privately, and it was disdained. The scientific value of Utilitarianism rests upon its powers of explanation; these powers depend in turn upon public acceptance of Bentham's definitions. Therefore Utilitarianism has never been put to a proper test.

The same answer applies to Bentham's primitive efforts to

incorporate number into the science of legislation. Statistics was a new science created during his life time; and even today it is still too crude for accurate political predictions. But this fact is evidence, rather, that measuring social phenomena is vastly complex and difficult, not that it is impossible or not potentially invaluable.

A criticism like Weldon's, therefore, seems premature:

What was correctly noted in the seventeenth century and repeated and developed by Kant . . . was the real importance of blueprints, diagrams and models . . . as explanatory techniques. The abstract ideas of political philosophy were supposed to have the same logical power. They had indeed no such power. . . .⁸⁰

Until the necessary verbal and mathematical conditions are given, who can judge?

There were at least two differences between the physical sciences and Utilitarianism that Bentham himself emphasized. The first concerned the role of experiment. No scientist does unplanned experiment. He selects things worth investigating and scrupulously sets up controlled test conditions. But such exact planning is impossible in human affairs, as Bentham knew very well.

This lesson, however, he learned slowly. When he was young, optimistic, and inexperienced, he had exuberant visions of easy successful planned social experiment. He was sure that Panopticons could become grand national experimental centres where all kinds of social reforms might systematically be undertaken. But when his contracted project to build and manage a Panopticon prison for government failed so ignominiously despite ten years of relentless effort and gigantic expense, Bentham soberly re-estimated the boundaries of the possible. They were much more narrow, he confessed, than he had once hoped. As we know, he concluded in his remarkable 'Short History', '*Fiat experimentum* was the aphorism of Lord Bacon. . . . *Fiat observatio* was the aphorism of Mr Bentham: for *observatio* not *experimentum* was the appropriate word here.'

The second difference Bentham noted was that the science of law 'is not like Natural Science susceptible of improvement without end. In natural science new facts arise, and must continue to arise to the end of time.'⁸¹ And so they do and must

continue to arise in the social sciences. Bentham was mistaken, but eighteenth-century English society was in fact relatively static, and his mistake was perhaps a natural one.

The crucial difference between modern physics and Utilitarianism, however, is neither of these. It is simply this: the Greatest Happiness Principle is not a scientific law at all. The laws of science state the *form* of regularities; Bentham's principle is his opinion that the greatest happiness should *become* a regularity. Though some subsidiary middle-level laws in his system might be predictive, the normative principle is not. It is a moral recommendation, and Bentham never made more pretentious claims for it.

Utilitarianism is more nearly a science of social medicine than social physics. As in medicine, creative invention in legislation went far beyond the formal and abstract, and far beyond immediately practical challenges of ills and cures to a splendid, imagined, future preventive science. What was Bentham's vision of the social future, when preventive legislation shall have done its work? What was his picture of social history? Of the pattern of his own society? How did he plan to transform the bleak present into a brilliant future?

Indirect Legislation or Social Therapeutics.

1. *The Promised Land.*

A new Moses must lead eighteenth-century Englishmen into the promised land. Because legislation finally controls all human activities, he will be a legislator. But he must have more than the will and power to command. He must be the nation's supreme metaphysician-lexicographer, logician, and deontologist-moralist, endowed with both a sharp analytic mind and a fervent, sensitive, moral imagination, a creator of new values as well as language. Neither a lawyer nor a philosopher, neither enchained by particulars nor floating on abstractions, he will be a Statesman. And he will bring about the necessary synthesis of *is* and *ought* by sympathetic insight into the Utilitarian logic of the will.

He was society's scout and Bentham was his. Not only did Bentham survey the promised land and map out the roads to it, but he supplied the full equipment for the journey. He offered the legislation the principle of utility in both its normative and

descriptive roles, and a refined complex of middle-level rules and principles that bound the two together, making the transition from theory to practice easy. This was the logic of the will. All its propositions were branches of the Encyclopedical Tree, arrived at by exhaustive bifurcation. These propositions fell into two classes, the general ones of good government and the particular ones of psychology, private morals, and social history. From the top of the hierarchy down, he offered the four subordinate ends of Utilitarian government – security, subsistence, abundance, and equality – and their related sets of axioms, the division of law into direct and indirect; substantive and adjective; civil, penal, constitutional, and international law. From the bottom up, he offered the basic division of all human action into pleasures and pains and of the mind into will and understanding. Then he called upon the legislator to join the two levels by the doctrine of sanctions, or inducements ‘by which men are prompted to maintain a line of conduct conformable to the directive rule’. The law-maker must explore the possibilities of calculation and estimate the orders of evil. He had a moral obligation to cure or prevent social ills wherever he found them and in proportion to their range of evil effects. Nothing in the entire area of human behaviour, actual or possible, lay outside his responsibility.

The roads to the promised land lay through the four sanctions – physical, religious, political, and moral. Bentham wrote the history of civilization in several ways, and one of his tests of progress was the relative force of a given sanction at a given time. In the most primitive societies men were wholly absorbed in caring for their physical needs. Gradually, supernatural forces were invoked to terrify them into social order. In the third stage of civilization secular law began to replace religious sanctions. Finally, men developed enough moral imagination and self-control to live peaceably together without threats and punishments. This sketch corresponded to others that Bentham drew: the development of civilization as the extension of foresight and certainty, and his picture of the three ages of law – Vengeance, Impartial Punishments, and the future Age of Prevention.

This future age was the promised land, and Bentham’s new Moses must lead his flock to it. In the ‘transcendental’ future, the good legislator will have provided for basic physical needs and subsistence for all, abolished the irrational and frightening religious sanctions, and sought in every way to minimize his own

professional judicial and legislative operations. In that ideal time, the moral sanction will have replaced the political. Men would choose to behave well because they understood Utilitarian rationales, not because their wills were coerced by threats of punishment. In that remote era all conflicting motives would be harmoniously reconciled. Bentham's vision was remarkably Confucian. 'But the thing is,' Confucius said in the *Analects*, 'to aim so that there should not be any lawsuits at all.'

All four sanctions led to the promised land, and if substantive and adjective law under the political sanction were direct routes, the legislator was equally responsible for clearing new paths down the indirect ones, physical, religious, and moral.

Though volitional and classical syllogistic logic were in some ways analogous, they were often at cross-purposes. As the central and sovereign source of power, the legislator was uniquely capable of bringing them together. If his methods were suave, silent, hidden, he might well arrive at the promised land most quickly through a detour. In 1794 Bentham explained:

Vulgar legislation drags men to its purpose in chains, from which, thanks to the bungling clumsiness of the grimgibber man at the anvil who forges them, the captives break loose in crowds: transcendental legislation leads men by silken threads, entwined round their affections, and makes them its own forever.⁸²

Unlike classical logic, the logic of the will and its subordinate indirect legislation were not static and timeless, but dynamic and temporal. Bentham's new discipline was a complex of four lesser logics. There was a logic of the present, a formal analysis of the practicable, of what *is*; and a logic of the future, a study of the ideal, of what *ought to be*. Nor was it impersonal but, rather, profoundly human. There was an individual volitional logic, concerned with analysing and ordering private responses, and an institutional logic, a study of social habits. The legislator therefore must always ask himself four questions. What can I do now to improve individual behaviour? To reform current institutions? What can I do to create a better world tomorrow among private citizens? In social organizations? All these questions had the same answer: the legislator must harmonize discordant wills and understandings.

Bentham's many subtle pages on indirect legislation are still

further evidence that he was a more substantial thinker than the straw man often opposed to Burke. Bentham, the crude simple-minded rationalist who disregarded tradition and history, is dismissed as no match for Burke, with his deep understanding of the complexities and value of customs and convention.

In fact, indirect legislation was Bentham's method of acknowledging the force of tradition. He was always supremely aware that a legislator never begins *ex nihilo* but surrounded by an enormous network of established expectations. Most of these he would neither need nor wish to change. Even when he discovers otiose or harmful customs that cry for reform, he will hesitate. Habits are pleasurable. Before he overthrows them, he must calculate and be reasonably sure that his new alternatives will be more pleasant or less painful. By clashing with settled usages, direct legislation is always painful in the first instance. By operating silently and urbanely through prejudices and traditions, indirect legislation can be made painless. Under the principle of utility, therefore, the legislator is morally obliged to exhaust his indirect means before he falls back on direct ones. Bentham said:

The goodness of . . . laws depends upon their conformity to the general *expectation*. It is highly necessary, therefore, for [the legislator] . . . rightly to understand [its] . . . direction, for the purpose of acting in concert with it. . . . As there already exists among all people a multitude of expectations, founded upon ancient laws or ancient usages, the legislator is obliged to employ a system of conciliation and concession which constantly restrains him.⁸³

He must study the history and tradition of his people in order to avoid 'that pain of disappointed expectation, which is commonly called *injustice* or *tyranny*'.⁸⁴

As Bentham's *Limits of Jurisprudence Defined* began modestly as Chapter XVII of *The Principles of Morals and Legislation*, gradually burst its boundaries, swelled into a book-length mass of manuscript, and was left unfinished, so his hundreds of unpublished pages on 'Indirect Legislation' began as Chapter XVIII, grew chaotically, and were abandoned. By 1782 Bentham despaired not only over his failure to find a sympathetic audience but over his own grandiose ambitions.

He had taken off with a grand analytic flourish. Starting with

the basic division of the springs of human action adapted from Blackstone, he announced that all evil arises from misguided will, that is, from failure of inclination, knowledge, or power. Indirect legislation is a series of 'expedients for adjusting the propensities of men to the standard of utility'.⁸⁵ He planned to trace its possibilities first through general inclinations, then particular ones, and so on through knowledge and power. But he got no further than general inclinations and did not finish that. His uneven fragments are mainly political, but it is possible to piece together some of his suggestions for the legislator's indirect control and development of the other sanctions. What kind of a world did Bentham describe and how did he plan to transform it?

2. *Physical and Religious Roads.*

Everywhere, at all times, and unavoidably, all governments use the physical sanction. Their very existence depends upon keeping their subjects alive, at least minimally fed, housed, and clothed. This was a truism to Bentham, incorporated as 'subsistence' among his four subordinate ends of government. Good government was distinguished from bad by 'abundance', the margin of good living it guaranteed above and beyond mere subsistence.

The indirect road to the promised land through the physical sanction, then, was the area between subsistence and abundance. As usual, Bentham began his analysis with a dictionary, by dividing police power into phthano-parenomic and phthano-symphoric, or crime-preventive and calamity-preventive. Embarrassed, however, by these ugly neologisms, he made only a few perfunctory subdivisions. By 1782 he at last despaired of reforming the conservative verbal habits of men. Though he deplored that the power of positive good had as yet no name, he could not bring himself to invent one.

But new names are needed to express new ideas. Thus Bentham tacitly admitted how hopeless his dreams of large-scale social reform were. For he lacked reliable social evidence as well. The descriptive science of statistics was both a necessary condition of effective indirect legislation and a branch of it. Before Bentham was ready to set any limits to what government might do, he demanded that it first find out the materials it had to work with.

The government's responsibility for collecting and publicizing information extended to every fact whatsoever: agricultural, financial, industrial, and political as well as social. Bentham called for a census, registers of harvest and food prices, rates and flow of money, industrial production and sales, and legislator's debates and votes.

Given this kind of information, the legislator would then be ready to create 'positive well-being', or programmes of social welfare aimed at abundance for all. He must seek the same ends through the physical sanction that he sought throughout direct legislation: the greatest happiness of the greatest number and its first subordinate, security. Theoretically, then, there are no limits to state intervention. Any government measure that increases national welfare and security is justified.

Where could and should government act at once? An obvious starting-place was labour legislation, for government was already responsible for unemployment under the Elizabethan Poor Laws. Because detailed programmes of social and economic welfare depend absolutely on preliminary statistical evidence, Bentham made virtually none during these early years. There is one exception, a plan for solving the problem of the able-bodied unemployed. Written in the 1770s before his reflections on indirect legislation had widened his radius of social sympathy, it is uncharacteristically authoritarian. It ruthlessly applies the gospel of hard work. However, it is so splendid an example of Bentham's working method – indeed, almost a caricature – that it is well worth quoting. He was inexhaustibly inventive and pragmatic, moving from the general principles governing unemployment to precise 'phenomenological' details about heating stoves and the education of pauper children. Of course he presupposed a popular registry.

A Shepherd knows every Sheep in his flock, though he have 2000 of them. Are men and Christians less worth knowing to their Pastor than Sheep?

Let the Minister of every Parish make quarterly or other periodical returns of all the people in his parish to the Bishop.

Let the Constable do the same thing to the Judge.

The Judge may at any time convene any person of his district in order to examine him touching the means he has of getting a livelihood [sic]: and if he has none, let him be consigned to some branch of the

public service: to the military service, the sea-service, or to public works, such as mending roads and harbours: taking his choice. . . .

Let public works be instituted to serve as standing funds of employment and sluices to take off the occasional surplus of the stock of labour the people have to dispose of: for instance, making and repairing roads, cleansing harbours, etc. with other suitable employments for women.

Let these workmen be put under a kind of half-military command, distributed into companies of fives – tens under Corporals, those under Sergeants, and so on. Some might command by rotation. . . .

If [a workman] . . . is married or has children, accommodations may be provided for his wife and family. But then his time of service should be longer.

The difficulty will be with respect to accommodations for living in winter. For this purpose there must be moveable stoves. . . .

There should also be a school to teach the children to read and write before they were big enough to work.⁸⁶

Bentham's principles contrast vividly with the doctrines of *laissez faire*. When government had the necessary facts and a trained bureaucracy to interpret and use them, it might regulate industrial production to prevent surpluses, unemployment, and recessions; it might set minimum wages, establish old age pensions and health insurance plans.

There were other areas, Bentham thought, in which government could and should act at once. At least one reason for the moral progress he was sure he saw all around him was the growing wealth and industrialization of England. He had a strong pre-Marxian insight into the interdependence of economic and social advance. Though he would not say, since he could not know, that in a universally 'abundant' society there would be no crime, Bentham was convinced that crime rates rose in direct proportion to poverty.

Yet great increases in national wealth were not enough to reduce crime. When riches are concentrated in a few hands, they tend rather to increase crime by exaggerating the chasm between the haves and the have-nots. To prevent such glaring inequalities was a proper object of indirect legislation, achievable through guaranteed wages and profit ceilings. Living in London, Bentham saw little of the Industrial Revolution, but he approved of what he did see.

The motives of . . . Crimes are more and more curtailed by the great increase of . . . employment . . . [and] manufactured riches Hence . . . there are fewer crimes committed in the present times of opulence, than in past times of indigence and barbarism. On the other hand they are increased by . . . the temptation arising from . . . superior elaboration [i.e., conspicuous consumption] which heightens more and more the contrast between indigence and opulence.⁸⁷

As the sovereign power in the state, the legislator had more sources of information than anyone else. He ought therefore to have the greatest foresight. He must be ready with plans to meet all conceivable physical disasters – floods, epidemics, crop failures. Bentham suggested, for example, that government establish a national system of grain storage bins to hold surplus yields of rich harvests, forestalling the misery threatened by future shortages.

It was only much later, during the 1790s, that Bentham finally began to apply his general principles to particular developments of the physical sanction. Three events shaped his new analyses and suggestions: Lord Shelburne, the French Wars, and Panopticon. The French Wars greatly intensified many serious, but ignored, economic ills – for example, growing inflation, unemployment, rises in taxes, especially Poor Law rates, and criminal population. Meanwhile, under Lord Shelburne's friendly influence, Bentham had begun to take a serious interest in economic problems and for the first time thought he knew a way to solve them. Could Panopticons not be adapted to fit any social situation? They need not be restricted to prisons, but could as well become schools, hospitals, and, above all, self-sufficient houses of industry.

Bentham was of course sceptical of what the English government as he knew it might accomplish. In that nest of nepotism and bumbling amateurism, few officials knew as much about the activities of lesser social and economic organizations as the members did themselves. But government ought to know more. Until it did, he counselled, it had best practise *laissez faire*. In the *Defence of Usury* he said, 'Shall the blind lead the blind? is a question that has been put of old to indicate the height of folly; but what then shall we say of him who, being necessarily blind, insists on leading, in paths he never trod in, those who can see?'⁸⁸ The implications of Bentham's analyses, however, lead

not to free enterprise but to equalitarian state socialism.⁸⁹

There is probably less light and more heat in Bentham's religious writings than in any other area of his thought. They are dim and intemperate for at least two reasons: he was constitutionally incapable of soaring into 'O altitudo's; and he was permanently scarred by a terrifying, authoritarian, and hypocritical religious education.

All the same, in religion as elsewhere, his personal biases are largely irrelevant. They may obscure his analyses, but he was too coolly intelligent to be ruled by them. As always, his overriding concern was neither subjective nor spiritual but impersonal and political. Given the facts of eighteenth-century English social organization, what shall the legislator do to improve them? If the legislator is responsible for indirect as well as direct legislation, how does the religious sanction work and how can he adapt it to Utilitarian ends? And as always, Bentham had many valuable and original things to say.

Slowly man learned to interpret one kind of natural phenomenon in terms of another and no longer invoked 'extraordinary providences' that explained nothing. At the same time, however, the professional clergy became a cabal. Originally the priesthood had arisen to enforce the religious sanction. No more able to give a natural account of physical events than their congregations, they were often highly intelligent, sincere, dedicated men. But they soon developed vested interests in their careers and devoted their best minds and energies rather to self-interested expansion and entrenchment than to the increase of knowledge. Left far behind in their sanctuaries of ritual and ignorance, they had long ago abandoned their early role of social shepherd to the legislator, and were more and more isolated from and ignored by their former flocks. Bentham denounced the clergy flatly as quacks who perpetuated vicious primitive 'nostrums'. When the religious sanction was at its height of influence, 'The sole antidote depended on for the cure of every moral ill, morality was at its lowest ebb: and as morality improves, their nostrum in proportion sinks into neglect.'⁹⁰

And there were signs, Bentham was pleased to note, of moral progress on every hand, so obvious that, in this area as nowhere else, new words to express new ideas were in common use. Man no longer spoke of 'sin' but of immorality. 'Impotent to do good,' Bentham concluded, the religious sanction in eighteenth-

century England was 'powerful only to do evil'.⁹¹ What kind of evil did it do?

It spread moral and intellectual poison throughout society, blocking healthy development of the more civilized political and moral sanctions. It began by corrupting the clergy, then spread by subscription to the Thirty-nine Articles and the tutorial system throughout the educated classes, and finally filtered down and tainted every Englishman. Bentham declared:

If the clergy are not the very worst body of the people, they have uncommon merit: for the tendency of their education is to make them so.

Subscription begins what ordination finishes . . . character of Hypocrisy and Dissimulation – subscription traces in the young mind the character of imbecility and double-dealing, yet not in such colours but that the free air of the world may in time often bleach. It is Ordination which fixes and renders them indelible.⁹²

All university students, not only future clergymen, were required to subscribe to the Thirty Nine Articles. When Bentham signed at Queen's College, the effects of the war between the religious sanction and his inner moral sense were so devastating that the abolition of compulsory subscription became a small obsession. To the end of his life he denounced that 'torpid superstition which benumbs all the faculties of the soul'.⁹³ It set off some of his most gorgeous blasts.

That state of prepared imbecility which is necessary to a mind for the tranquil reception of one parcel of Nonsense, fits it for another. . . . A man who after reading the scriptures can bring himself to fancy the doctrines of the Athanasian Creed . . . his mind if not already blotted over with hieroglyphical chimeras is a sheet of blank paper, on which any one who will press hard enough may write what scrawls he pleases.⁹⁴

A young clergyman, thus poisoned, became a tutor in aristocratic families and tainted his small pupils. Bentham continued, 'He stamps the figure upon the infant mind of his mutilated and stunted intellect.' There was sometimes a purgative: the Grand Tour.

When a young man comes to travel, he then sees how poor a figure a professor of what here goes for orthodoxy, maketh in the great theatre

of Nations. . . . Even the Diplomatic director of his opinions will not seldom return cured . . . of the . . . vertigo, and disgorge . . . the nonsense he had been made to swallow.⁹⁵

Unfortunately, most clergymen and their pupils never overcame their infection, and as they grew older and played active parts in the national political and moral life, they took jaundiced reactionary views of all proposals for reform. Bentham explained:

Anti-reform is the line of conduct marked out for them by their situation: for their fears teach them, that a discerning and improving spirit, once received, may be contagious; and may awaken men's minds out of . . . [religious] debility.⁹⁶

Good legislation presupposes psychological insight. The clergyman's bad education or 'prepared imbecility' keeps him blind to the motives of men, and he is therefore a bad legislator.

He glories in:

A morality hollow as it is gloomy, contradictory as it is confused. . . . Thus it is they require Trade and Industry to be sacrificed under the name of Luxury. . . .

Besides the *propensity* which they acquire from their character and pursuits, Divines have an obvious interest in propagating . . . despondency and ill-opinion of the times. For the neglect, to say no more, of their controversies, is a matter which is visible: they . . . make the most of the Vice that there is, for the sake of charging it as a consequence of that neglect.

Because Divines have ingrained

Habits of Humility and Depuration [sic], nothing great and liberal is to be expected [from them] in the way of Legislation.

Employ'd in reading the Book of Human Nature backwards . . . occupied perpetually in preaching to men the sacrifice of their interests which in one sense . . . is impossible; they cannot arrive to any perfection in a science of which . . . Human Nature is the basis.⁹⁷

Intemperate as his attacks were, Bentham nevertheless insisted that 'in speaking of religion I am on the whole considering not what it ought to be nor even what it might be but what hitherto, in the mind of men, it has been.'⁹⁸ What kind of

therapy or indirect legislation should the Utilitarian legislator recommend? As always, Bentham was profoundly sensitive to the obstacles he faced. He did not expect to purge deep-rooted ignorance, habits, and prejudices by forced draughts. The ranks behind the religious sanction were too powerful to be overthrown at once, but they could and must be driven from their illegitimate invasions of politics and morals back to more narrow boundaries of religion proper.

If the doctrine of sanctions was one of Bentham's fundamental middle-level laws, leave to religion the things that are religion's was a corollary, from which particular rules followed. All political connections should be severed. There must be no 'Establishment' and no religious tests for public office. Oaths of every kind, in the universities, law courts, and Parliament, must go. Bishops had no proper place in the House of Lords. All legal penalties against non-conformity must be abolished.

Yet the early Bentham was circumspect. Still hopeful of persuading legislators to become Utilitarians, he kept these revolutionary opinions to himself. He wrote page after page of denunciation, but as self-therapy, to purge himself of spleen. Prudently, he put them away unseen and unpublished. After writing eighty pages on the Establishment and its reform in 1773 he concluded, 'The contents of this chapter, it will be seen, are a little out of season – it may serve for another Parliament, or another Age.'⁹⁹

Though isolating the religious sanction was not immediately possible, the good legislator must make it his long-range ambition and work slowly towards it. In the meantime, what direct practical steps could he take to harmonize the more primitive religious and the more civilized political and moral sanctions?

Above all he must welcome complete freedom of religious opinion. Conceding his own prejudices in 1775, Bentham still insisted:

If there is one set of notions to which my opinions are averse more than another, it is Popery: this being the case, no Papist so bigoted, I could declare myself more cordially disposed to him, more of his way of thinking, let him agree with me in the single article of toleration, than with him whose sentiments and affections discordant with them in that were in all other respects in unison with my own.¹⁰⁰

For the rest, Bentham tried to make the best of a bad situation. He accepted religious attitudes and institutions as he found them, and tried to bend them to Utilitarian ends. A few social evils were or should be beyond the power of other sanctions to cure. These the legislator could safely leave to the religious sanction. One example was drunkenness, not ordinarily the business of direct legislation. Another was any evil act without witnesses, such as smuggling. It was barely possible that supernatural fears and threats might help to control it.

When Bentham looked for examples of successful adaptation of religious institutions to higher moral ends, he found them in Scotland. There the clergy not only preached but taught, and education, Bentham thought, was the most useful work they could do. If the Establishment could be persuaded to assume the responsibility, universal elementary education could easily and inexpensively become a fact, for a trained teaching staff was already dispersed throughout every parish in the country.

The Scottish clergy served Bentham as applied examples of other middle-level laws: the blessings of equality and the rationale of reward. In England the chasm between the highest and lowest clerical salaries was enormous, ranging from £20,000 a year down to £10. The wealthiest clergymen had every inducement to idleness and ostentatious display; the poorest struggled to stay alive. Things were better ordered in Scotland, where the entire clergy was adequately but modestly paid and expected to work hard for its income. Bentham thought that Scotsmen were more civilized, more sensitive to moral sanctions than the English in at least two ways, and he suspected that their proper use of the religious sanction was at least one cause.

In the first place, if the primitive statistics of the time could be trusted, there seemed to be less crime in Scotland. In 1783 Bentham wrote to Dugald Stewart, seeking his help in compiling a table of crimes.

Upon the supposition that the influence of religious instruction is beneficial, upon the whole, to the temporal interest of society . . . I know of no observable standard more exact for estimating the value of that service, than the comparative paucity of . . . crimes. . . . I . . . think it would turn out that [in Scotland] . . . instead of being greater than in England, in proportion as the pay of the clergy . . . is less, [it] is in fact less: and that therefore, in Scotland, the clerical

work is not only done for less money than in England, but better done. This is the inference I am disposed to draw from the Table of Convictions in Scotland, already published by our excellent friend Mr Howard.*

In the second place, the Poor Law was far better and more cheaply administered in Scotland than in England. In 1781 Bentham explained to Lord Shelburne:

The three great hinges upon which the perfection of the Scottish management . . . turns are the virtues of humanity, frugality, and honest pride. . . . The first of these qualities I make no doubt of our possessing in at least as high a degree as they: it is to this that we owe such as it is the present system of the Poor Laws. But in both other points we have been hitherto, and perhaps ever shall be, far behind them – with them the business is done by *manners* only, and, as far as taxes are concerned, for nothing: with us, by a most complicated system of laws, and at an immense expense.¹⁰¹

This was Utilitarianism in action. The good English legislator should adopt the Scottish example, Bentham counselled, adding a few novelties of his own. The clergy might become a benign arm of the law, by reading sections of the legal code regularly from the pulpit as the ancient Jewish rabbis had done.

If the whole law were reduced to writing . . . if the general code were universally circulated – if it were made, as among the Jews, a portion of the religious service, one of the manuals of education . . . the laws would then become truly known.¹⁰²

When his step-brother Charles Abbot drew up the first Population Bill in 1800 Bentham suggested that the clergy take the census.

The task . . . requiring, after all, an understanding not altogether devoid of culture, why not commit it at once, and that exclusively, to the officiating minister of each parish or place?¹⁰³

Bentham's religious opinions later underwent the same arcane-popular split, long sleep, and renaissance as his psycho-

* X, 129–30, 27 June. Dugald Stewart (1753–1828), then professor of mathematics at Edinburgh. John Howard (1726?–1790), the prison reformer, whom Bentham vastly admired.

logical and ethical theories. As long as the palest shadow of possibility lingered that government might apply his reforms, Bentham concentrated rather on practical reforms than polemics. He was anxious to antagonize as few legislators as possible. But his twenty-year struggle and final failure over Panopticon, ending in 1812 when the courts awarded him £12,000, taught him conclusively that his strategy of discretion had been futile. From then on, his popular writings became ever more unrestrained, even violent.

During the decade 1812-22 Bentham wrote thousands of pages on religious subjects, eventually edited and published as *Church of Englandism and Its Catechism Examined* (1818), *Not Paul, but Jesus*, by Gamaliel Smith, (i.e., Francis Place, who compiled and edited Bentham's MSS., 1823), and *Analysis of the Influence of Natural Religion on the Temporal Happiness of Mankind*, by Philip Beauchamp (i.e., George Grote, 1822). These are among the most submerged of Bentham's writings. As his early remarks on religion were excluded by Dumon¹⁰⁴ from the *Traité*s, so these later ones were excluded by Bowring from the Collected Edition. None of them has ever received a full critical examination.

In *Church of Englandism*, Bentham revived the same subject, the relation between church and state, that he had considered and abandoned under 'Indirect Legislation' in 1781-82. It is the 'popular' expression of his now dual system of ideas. The other two books are parts of the 'arcane' half. In some ways, however, they are altogether new departures, Bentham's first serious attempts to discuss religious history, emotions, and biblical exegesis for their own sake, rather than as a subordinate sanction for the sake of the legislator. Curiously, *Not Paul, but Jesus* has the same thesis as Nietzsche's *Der Antichrist* (1895): 'In truth there was only one Christian, and he died on the cross.'¹⁰⁵ Both men claimed that Paul destroyed the spirit of Jesus.

3. *Political and Moral Sanctions.*

Analytically, it was a simple matter for Bentham to distinguish the political from the moral sanction. Though in the ideal future both would encourage identical Utilitarian behaviour, though the strength of the moral sanction was the measure of civilization, no sanction could compete with the political in power and widespread effect. 'Many men fear the wrath of heaven,' Bentham said, 'many men fear loss of character:

but all men are acted upon, more or less, by the fear of the jail, the scourge, the gallows, the pillory.'¹⁰⁶

In practice, however, they were bewilderingly intertwined. Their relationship was so complex, so crowded with uncharted possibilities, that Bentham barely began to explore them. In the temporal logic of the will, indirect legislation may follow upon and correct direct legislation; it may precede it, short-cutting a stage in the development of civilization by channelling classes of behaviour ignored by the law; or it may march together with it. Direct legislation may be adjective or substantive, private or public, civil, penal, constitutional, international. In each of these areas it may have unlimited indirect political and moral effects, on individuals or on variously large social groups.

Amid this confusing welter, where does the Utilitarian legislator begin? How does he direct the acts of men so that they shall one day become their own judges and legislators? In the far distant future the moral sanction will inevitably overtake and ultimately replace the political. Meanwhile how shall he speed its progress? In his role as mass moralist, can he invoke the moral sanction directly, or must he steer a roundabout course through the physical, religious, and political sanctions?

For the most part, he must be content to work indirectly, humbly, patiently. He must begin with man as he is, a near-barbarian torn between warring impulses, a mixture of 'virtue' and 'vice'. Hostile to organized religion as Bentham was, he nevertheless had a deep Christian sense of 'sin' and of man's eternal struggle to overcome it. He spoke not of 'sins', however, but of the conflict between the will and the understanding, between the 'pugnacious' and 'rational' elements in man's personality. He liked to quote Ovid: 'I see the better and approve it; the worse I follow.'¹⁰⁷

In his own words he explained:

When the Angel Gabriel prepared the prophet Mahomet for his apostolic mission, he cut out of his heart the black speck which was the seed of *evil*. But in hearts of ordinary mould good and evil grow out of the same stock. . . . There is therefore no such thing as eradicating evil affections or inclinations occasionally and in detail. . . .¹⁰⁸

Moreover, what can the legislator know of individuals? Every man is his own judge of right and wrong. His motives, so Bentham

insisted, lay hidden in dark corners of his mind, unknown to other men and often to himself. There was one small way, and only one way, that a legislator could reach individuals directly through the moral sanction: by offering himself as an example of perfect integrity. For as Bentham explained, a man cannot be forced to be good. The least obnoxious way for him to learn lessons of morality is 'by observing the treatment that is given to real persons on account of actions that take place before his eyes'.¹⁰⁹

Though Lord Mansfield's court was indeed a kind of elementary school of morals, so long as judges were fee-paid 'fathers of lies' who issued 'mendacity licences'¹¹⁰ wholesale, their courts were rather schools of vice and corruption. Judges were initially no worse than other men, but the barbaric system of procedure they administered hardened them into masters of sin. Bentham's picture of the English legal system was a black chronicle of official corruption, perjury, venality, nepotism and grand larceny. The judges were corrupt; their entire court personnel was corrupt; and they forced corruption upon a helpless public. Moral rot was so pervasive that even improvements in the common law developed as 'pious perjuries'. It was therefore in the service of preventive or 'transcendental' legislation, of the indirect strengthening of the moral sanction through the political, that Bentham dedicated himself to create complete new Utilitarian codes of procedure and evidence. Under these codes even a bad judge must do good, and his court would become a national theatre of virtue where moral dramas were continually performed for the enlightenment of the public.

Meanwhile, what immediate steps toward moral progress could the legislator take? If direct action through the moral sanction was unpromising, what avenues through the other sanctions were open? There was an order of urgency among the possibilities. First of all, the sanctions were at war and he must negotiate peace among them. They were a public reflection of each man's private psychological struggles. How did the sanctions conflict in eighteenth-century England?

The religious sanction, for example, was set against the political by such maxims as, 'Let him who is perfect cast the first stone', when good government required that critics throw stones – though official reputations were smashed. The religious sanction was set against the moral: the Establishment was

exclusionist and bred intolerance. The moral sanction was set against the political: the legislature rewarded informers though everyone, the legislators included, thought them odious. The political sanction was set against the moral: a free press and free speech were vital to moral progress, yet 'libels', defined very loosely, were punished; by enforcing oaths the legislature offered rewards for perjury, for most public officials were sworn in.

The war of motives, then, raged on two battlefields: in a man's soul, privately, and in the laws and institutions that governed his public behaviour. Was one war the result of the other? Was man's moral ambivalence entirely the product of bad institutions, or were bad institutions an outgrowth of his natural irreducible perversity? Bentham could give no answer. Certainly he thought they interacted. The very possibility of effective indirect legislation rested on this assumption. In 1782 he wrote:

All the indirect means . . . must be employed in directing the inclinations of men, in putting into operation . . . *the logic of the will* – a logic which, as Ovid has so well expressed it, seems often to be in opposition to that of the understanding: *Video meliora proboque Deteriora sequor* – I see the better and approve it; the worse I follow. The [indirect] means . . . put a stop in many cases to this interior discord; [and] . . . diminish that contrariety among motives [often initiated by the legislator] . . . between the natural sanction and the political sanction, between the moral sanction and the religious sanction. If he could make all these powers concur towards the same end, all the faculties of man would be in harmony.¹¹¹

And this end was of course the greatest happiness of the greatest number. As in every area of the logic of the will, Bentham's first step in harmonizing the sanctions was to offer a new Utilitarian dictionary, one in which the vocabulary of morals would be synonymous with the vocabulary of politics. There would no longer be a double ethical standard, a civilized one for private life and a barbarian one for public. In the new Utilitarian dictionary there was a single hierarchy of values based on radius of social and temporal reference, that is, foresight. Far from celebrating parochial 'self-interest', Bentham deplored it as a relic of barbarism.

Why, then, was it a key term in his dictionary? There virtue and foresight are synonymous. All virtues are divisible into self-

regarding and other-regarding; that is, into prudence, the judicious exercise of foresight into one's own affairs, and benevolence, the widest extension of sympathy for other men. Bentham emphasized the virtues of prudence for two reasons. In the first place, this much maligned 'virtue' of Utilitarianism was a platitude of eighteenth-century thought. Popular moralists assumed that self-interest was the spring of human action. Conservative, respecting prejudice, Bentham simply borrowed it from the common universe of discourse. Burke said what everyone thought, 'Prudence is not only first in rank of the virtues political and moral, but . . . the director, the regulator, the standard of them all.'¹¹²

Moreover, prudence was in fact Utilitarian. Another eighteenth-century platitude was 'the virtue of self-denial'. Bentham looked about him and saw how useful prudence and self-denial were in an England on the threshold of the Industrial Revolution. Memories of gin-drinking orgies were fresh and many early manufacturers' biographies were genuine Horatio Alger thrift-and-hard-work stories.

There was nothing revolutionary about Bentham's definitions. Utilitaria was not Utopia. It was no part of his purpose to overturn conventional habits, values, and customs, but rather to stretch them to wider radii of social reference. He sought modestly to show men that their unquestioned, often chaotic, and incompatible values might be ordered, harmonized, pragmatically justified, measured, debated, and agreed upon, by fully tracing their Utilitarian consequences. What Nietzsche contemptuously labelled 'British' virtue and happiness were good enough for Bentham – if people chose them freely, with foresight. They were not good enough in eighteenth-century England when men accepted them blindly, in terror aroused by religion or in imitation of amoral aristocrats.

Though Bentham re-defined virtue as foresight, many of his particular virtues were conventional, even puritanical. Though he accepted much of the commonplace morality it was often only as means to further ends. He wanted to make private virtue attractive by giving its puritanical self-denying drab a brighter, more indulgent, Utilitarian covering. Above all, he hoped that his tolerance of convention would inspire a similar public tolerance of the new social language of utility. His purpose was not to persuade men to abandon 'self-interest', which they would

perhaps have scorned as unnatural, impossible, absurd; but rather to consider 'self-interest' as synonymous with 'public interest'.

As Bentham explained in 1773, the political and moral sanctions have the same object.

The proper and only useful business of Morality and Politics is to establish and illustrate the connection between private and public interest. The more it is made appear how . . . public interest is reflected upon private . . . the nearer do . . . human feelings approach to perfection.¹¹²

His opinion was the same in 1815.

The prevalence of the self-regarding over the social interest, as a cause of immorality, it belongs, in a great measure, to the ruling powers to remove. Wise legislation should be directed to their identification [which] . . . is strengthened by every law that is good; weakened by every law that is bad. . . .

Out of the clashing of popular interest with those sinister interests which are too often protected by legislation, misery and immorality frequently grow to a frightfully baneful extent. . . . *Good government is, in a word, the harmony established between legislation and enlightened opinion.*^{114*}

And the first place to establish this harmony is language. Therefore Bentham sought to equate virtue and foresight, prudence and benevolence, self- and public-interest, and so to speed the advance of civilization. He considered prudence, thrift, and industry 'virtuous' partly because they were hoary middle-class counsels and partly because he could make a demonstrable case for their utility in an England that was every day becoming more industrialized and middle-class.

But benevolence was *the* key word in his moral dictionary, the supreme virtue in the Utilitarian hierarchy of moral values, in fact, the very measure of civilization itself. Bentham explained in *The Principles of Morals*, 'For the dictates of utility are neither more nor less than the dictates of the most extensive and enlightened (that is *well-advised*) benevolence.'¹¹⁵

* This harmony between self- and public-interest actually existed in the newly independent United States, so Bentham and de Tocqueville after him were delighted to discover.

The good legislator-lexicographer creates values. He is at the same time an indirect legislator or mass moralist. It is his responsibility to teach men that though the synonymy of prudence and benevolence may seem paradoxical, the most prudent man is also the most benevolent. As their new Moses, he must lead them out of the parochialisms of time and place, of family, class, and professional prejudice, from which he has already freed himself. He must guide them from blind self-interest to enlightened self-interest, that is, to panoramic social sympathy. He must:

give to all [their] . . . sentiments of benevolence the most advantageous proportion, by pointing out the littleness and the danger of those caprices, antipathies, and momentary attachments, which incline the balance against general utility and permanent interest.¹¹⁶

According to Bentham, benevolence was as natural as 'self-interest'. To be sure, it was weaker. But when the legislator encouraged it, he merely accelerated the inevitable.

By some social link . . . almost every man is bound to the great body of the public. The circle widens, the intimacy strengthens as society becomes more and more intelligent. The interest in a family extends to a tribe, from a tribe to a province, from a province to a nation, from a nation to mankind. And as political and Deontological science become better understood, the dependence of every man upon the good opinion of all besides will be increased, and the moral sanction grow stronger and stronger . . . so that a period may be anticipated in which . . . the moral will supersede a portion of the political sanction.¹¹⁷

At the same time, formerly inaccessible parts of private morals will come under the political sanction. 'As the public mind matures itself, the matter of *private*, will be removed into the field of political, deontology.'¹¹⁸

Ultimately there will be one world, united in morals and politics. In 1789, moved by sympathy for the French Revolution, Bentham suggested:

Magnanimity of being just to France during her present weakness. Good morals as laudable between nations as between individuals. The contrary notion barbarous. In the progress of civilization good

morals came first between individuals because the necessity is greater. But they will come at last between nations. This not a visionary idea.¹¹⁹

What would happen if men adopted Utilitarian definitions? In this new lexicographical-moral-political area, Bentham was necessarily vague about the possibilities. Here he could not reduce middle-level rules to particulars, for there were no precedents. He did of course assume that new definitions would lead to new non-conflicting moral and political value judgments, but he was no prophet and gave no details.

Clearly, then, indirect as well as direct legislation begins with a dictionary. The vocabulary of transcendental legislation is, however, far more extensive, for it presupposes the technical terms of law and politics and adds the language of morals to them. The indirect legislator then equates them, so that 'self-interest' and 'public interest' are synonymous. In this way he develops the moral sanction through the political, for the dictionary is an inseparable part of his written codes. Bentham could no more prophesy the indirect moral benefits of Utilitarian definitions than he could foretell those of written codes. Clearly, he thought they must be enormous. Dictionaries and codes both gave men security, and security is the rich soil of civilization. Without it, social and cultural institutions cannot sink firm roots and grow from barbarism to the future age of transcendental legislation.

A complete code of laws is the greatest gift a legislator can offer; it gives the stability necessary for political and moral progress. Therefore he does most to develop the moral sanction by developing the political; by writing the law down with reasons explaining it, arranging it in simple codes for different classes of people, and teaching it to everyone.

If the laws were founded upon reason, they would infuse themselves . . . into the minds of the people: they would form part of the logic of the people: they would extend their influence over their moral nature: the code of public opinion would be formed by analogy upon the code of the laws, and by agreement between the man and the citizen.¹²⁰

The legislator's next most effective means of encouraging the moral sanction may be summarized in one word: publicity. If

security is the first subordinate end of good government, then 'the grand security of security is *publicity*: – exposure – . . . whatever is done by anybody, being done before the eyes of the universal public.'¹²¹ By every means he commands, the legislator must try to broadcast the results of action, to teach by concrete examples. Let the laws, Bentham suggested, be taught in schools. In the 1770s he listed a few possibilities for incorporating the code into the curriculum.

1. In the lower forms let the general part of it be got by heart: and out of it let examples be taken of the rules of Grammar.
2. In writing schools let the patterns given to the scholars to copy be taken from it. . . .
3. When dead or foreign languages are taught . . . let [the Code] . . . be taken to translate. . . .
4. In writing schools it is common . . . to copy from little sentences of morality. But the rules of Law are sentences of the most important and indispensable morality: the neglect of the former produces inconvenience: the neglect of the latter, ruin.¹²²

Nor must teaching and publicity be confined to legal codes and schools. Because drama, history, and biography also describe acts and their consequences, the legislator might well underwrite a Utilitarian literature. Because he alone surveys the whole of society, he might collect information about the consequences of all human acts, and not only legal offences; he should publish histories and anthropological essays as well as reports of trials. He might make separate moral codes based on these observations, recommending different virtues for different classes of people. During these early years Bentham was not yet a democrat, and he frankly wanted to teach man his station and its duties. There were no moral universals, he claimed, only a series of pragmatic adjustments.

The divisions in these codes might correspond to the several virtues which are the most looked for in the persons by whom these stations are respectively filled: such as intrepidity, promptitude of obedience, long-suffering, humanity in the soldier; disinterestedness and humanity in the physician and lawyer; disinterestedness, humility, mildness, tolerance, liberality of sentiment in the divine: integrity and frugality in the trader; incorruptibility, public spirit, assiduity, firmness, affability in the statesman. . . .¹²³

Long before Bentham had surveyed the whole area between the political and moral sanctions, he abandoned his analyses. He never ordered his scattered results and never reduced them in his usual way to a few summary principles. All the same, there are three principles implicit in his discussion of the legislator's proper role in developing the moral sanction. They are already familiar.

There is, first, the primeval indispensable principle of economic security, subsistence and abundance. A starving man will fill his stomach before he thinks about civil rights. Political security therefore rests on economic. This was so obvious a truism, Bentham thought, that it needed no discussion. It was true in fact and true by definition. If civilization is measured by radius of social reference, a starving man is a savage, for he is blind to everything but his urgent need for food.

There is, second, the principle of education. From the legislator's exalted position at the top of the social pyramid, it would seem that he might best begin his campaign of moral progress at the bottom, among children in schools. Surely it must be easier to plant Utilitarian ideas in virgin minds than in adult ones already crowded with contradictions. Yet during these early years to 1782, Bentham barely considered the possibilities. Why? Once again we have an example of his invincible pragmatism. He thought and wrote as specific problems presented themselves, giving piecemeal answers to piecemeal questions until he had exhausted them. Only then did he synthesize his findings and offer general principles. But until 1782 he was absorbed in his codes, and though he had already considered almost every conceivable subject on the all-comprehensive Encyclopedical Tree, he had seen them only as subordinate branches of the law and not as independent disciplines to be studied for their own sake.

So it was with education. Although education is obviously a fundamental part of indirect legislation, by 1782 Bentham had found neither the time nor the occasion to consider it exhaustively and independently. He assumed that education is an invaluable Utilitarian tool, a measure of civilization, and that everyone can and should be literate. He offered suggestive fragments: Establishment clergymen should become schoolmasters; children should learn grammar by parsing laws; the codes should be read aloud during church services. These are, however,

limited suggestions for teaching the law and not parts of a full-scale theory of education. That came later. By the 1790s both the challenge and the response were at hand. When a series of economic crises followed upon the war with France, the reform of the Elizabethan Poor Laws became an urgent national issue. Bentham was ready with a practical answer: let government build a nation-wide string of Panopticon poor-houses. Faced not with speculative cobwebs but an immediate crisis, he enthusiastically planned every detail of the lives of his pauper tenants from birth to death. Now for the first time he had a good Utilitarian reason for outlining an entire theory and programme of education. The implicit secular, scientific, practical, democratic bias of his early fragments now became explicit.

There is, finally, the principle of free communication. It would be nearly impossible to exaggerate its importance in the Utilitarian canon. From first to last Bentham demanded total freedom to assemble, speak, write, and publish; in open-air meetings, Parliament, the courts; in books, magazines, and newspapers. 'Let all things be known' was a vital commandment of the Utilitarian gospel. Unless communication is free there can be neither good government nor indirect legislation. There can be no reconciliation between warring sanctions and no progress from the political to the moral, for publicity is the bridge between them. Bentham combined the political and moral sanctions in a commandment for the good citizen: '*To obey punctually: to censure freely.*'¹²⁴ In 1815 he repeated a life-long conviction.

The more men live in public, the more amenable they are to the moral sanction. . . . The liberty of the press throws all men into the public presence. . . . [It] is the greatest coadjutor of the moral sanction. Under such influence, it were strange if men grew not every day more virtuous than on the former day. I am satisfied they do.¹²⁵

In *A Fragment on Government* Bentham had asked, what is the difference between free and despotic government? It is not a question of more or less power, he answered, but of its use. A free government depends:

on the responsibility of the governors; or the right which a subject has of having the reasons publicly assigned and canvassed of every act of power that is exerted over him: – on the *liberty of the press*; or the

security with which every man . . . may make known his complaints and remonstrances to the whole community: . . . ¹²⁶

Bentham valued no institution more highly than a free press. Newspapers, he apostrophized around 1773:

propagate to every corner of the Empire alarms for . . . [the people's] security, circumstances of felicity for their joy and lessons for their instructions: . . . break down by degrees fragments from the bulky pile of Science to knead them into the mass of general intelligence . . . display examples of Vice for their avoidance, and of Virtue for their imitation. The infallible preservatives against devotions and superstitious imposture: – which making every part labour for the whole, joy for the whole, sorrow for the whole, contribute more than any regulation that can be devised to strengthen that social bond which collects the scattered citizens into members of one great family: which exercises the minds of men for the public service as the games of Greece and Rome did their bodies – which are the sources of amusement to so many to whom misfortunes have denied domestic comforts, and help them to support the fatigue of being.¹²⁷

They were multi-purpose instruments in his logic. Potentially they were great engines of moral improvement. By offering unbiased news they might create that informed public opinion which is a condition of effective social action. For the legislator, newspapers should be trumpets and sounding-boards. Through them he could not only publicize his own policies, but learn the social facts that good legislation presupposes. They should be a popular stage, displaying the needs, desires, and opinions of the average citizen. By providing the social evidence otherwise unobtainable in eighteenth-century England, they helped to close the gap between the *is* and the *ought*.

In a sense Bentham was already a democrat in the 1770s – an extra-parliamentary democrat. As every man might be his own lawyer when the law was codified, so every man might be his own legislator if Parliament were an open forum and the press free. It is easy to understand the extraordinary importance of a free press in this early extra-parliamentary democracy: it guaranteed that necessary condition of good government, the identity of self-and-public interest. 'So paramount in my eyes is the importance of this liberty to good government,' he said, it is 'more so perhaps,

supposing the separation possible, than even the form of government itself.'¹²⁸ So long as the press was truly free, so long as the moral sanction was powerful enough to curb the political, the technical forms of government – monarchy, aristocracy, democracy – were secondary. They became significant to Bentham during the 1780s and 1790s when he saw this freedom threatened.

His picture of an extra-parliamentary democracy ended in a prophetic vision. As early as 1773 he exclaimed that the:

joyful day, which should . . . call the whole Body of the British Nation to the participation of those Councils, of which their every interest is involved, would awaken my love, my confidence, my respect, I had almost said my adoration. . . .¹²⁹

Between this splendid vision and the facts, however, there was a void. He had assumed a dual responsibility: of the governors to the governed, by guaranteeing full publicity to every legislative act; and of the governed to their fellow citizens and their governors, by supporting calm and objective newspapers. His assumption was mistaken and he admitted it abruptly.

But in vain do I amuse myself with these speculations, while the hereditary prejudice still triumphs, and the delegates of the people indicate it as their privilege to manifest nothing but disdain to those who made them what they are. . . .¹³⁰

As soon as Bentham's vision extended from the courts to the legislature, he saw that free speech was no less a mirage in the Houses of Parliament than it was in Westminster Hall. How was it possible for members of Parliament to speak freely when they were not themselves free? The eighteenth-century system of 'places' and pensions destroyed the independence of office holders. As he cynically explained:

A drunken man, says Lord Coke, is a voluntary devil . . . he might have defined a pensioner during pleasure as a voluntary slave. . . . It is necessary that there should be slaves: for the subordinate must be subservient to his principal or business can not go on . . . but it is not necessary that slaves should possess a share of sovereign power.¹³¹

It was true that parliamentary oratory was notoriously rough-and-tumble. Foreign visitors to the galleries were often shocked.

'I could scarce believe,' wrote one German in 1775, 'that such expressions were permitted in an assembly of this kind.'¹³² Bentham rather favoured these violent skirmishes. If the charges were false, government should offer the facts to prove it; if they were true, the attack was deserved. If unhindered criticism is a condition of good government, officials must learn to suffer it.

The military functionary is paid for being shot at. The civil functionary is paid for being spoken and written at. The soldier, who will not face musketry, is one sort of coward. The civilian, who will not endure obloquy, is another.¹³³

From the beginning, while he was still a Tory, Bentham was dissatisfied with the limits of parliamentary freedom. Obviously, the principle of free speech applied equally to all members. The Ins and the Outs, the Whigs and the Tories, must at all times share the same right to criticize and explain. How much freedom did government allow its opponents in the 1770s? Bentham gave an unexpected answer: too much. Lord North's government was no ruthless tyranny that silenced opposition but rather so weak that opposition silenced it. The American War of Independence was unpopular from the start. Only a few staunch Tories like Dr Johnson, Gibbon, and Bentham supported it. As the British prospects in the War became ever more gloomy, the habitual shrill voice of opposition became ever more harsh and vituperative, until Lord North's administration could no longer get a measured hearing in Parliament and was finally overthrown. In this unusual situation, the Outs had too much freedom of speech and the Ins had too little. The forces of the opposition had a press monopoly and filled their papers with fallacies and lies. The monopoly was popular because government was hated. A newspaper known to be officially subsidized lost its status at once.

How could government present its case? How could a balance of debate between Ins and Outs be restored? In 1776 Bentham drew up Machiavellian plans for a government newspaper that would support official policy under an elaborate show of objectivity. Called 'The Candid Intelligencer' or 'The Impartial Post', it was to be printed by Rivington, one of government's libel law victims. Pro-government statements were to begin with criticisms. Bentham justified these subterfuges because a

Minister's power was a function of his popularity. Unheard, he was condemned and ineffectual. The popular mind reasoned correctly but on false facts. Supply the truth and eventually the moral and political sanctions will harmonize.

An important feature of this newspaper was to be an exposure of fallacies, the errors of Opposition editorials. Bentham proposed to classify them daily, under such titles as 'Gross and palpable falsehoods. Pious wishes given under the name of prophecies. Malicious insinuations.'¹³⁴

The odd political imbalance of Outs over Ins continued during Lord Shelburne's short-lived ministry from 1782 to 1783, but after William Pitt became Prime Minister in 1783 the balance began to shift. The victim became the oppressor and Bentham shifted his sympathies. Even before Pitt came to power, however, Bentham understood how precarious press freedom was. Under the common law libels were strictly punished. Newspaper editors enjoyed their freedom under sufferance.

If the law is to decide there is no more freedom of the press than there is toleration of religion. The liberty of the press . . . is one of the long catalogue of blessings which we owe not to the wisdom, the consistency, the power of the law, but to its folly, inconsistency, or impotence. De facto we have enough of it and more than enough: but de jure we have no such thing. . . . If any point can be said to be settled which has no clearer foundation than the common law for its basis, it is this, that individuals have no right to pass censure upon the proceedings of the government. . . . The perjury of jurors and the anarchy that was the consequence turned this branch of the law into a dead letter. Detesting the cause let us rejoice in the effects.¹³⁵

After the French declaration of war in 1793 England became virtually a one-party state. The Whigs disappeared as an organized opposition, and until the final defeat of Napoleon in 1815 a demand for free and equal speech would have been condemned as unpatriotic or even treasonous. As Bentham feared, government tried to silence opposition by enforcing its age-old common law powers. He was of course sensitive to these changes. As the area of free debate shrank, his dissatisfaction grew. When government abandoned this fundamental right, it forfeited his loyalty. No longer were forms of government secondary. He added this malpractice to the already alarming list of political abuses he had been compiling since the 1770s and

finally demanded a radical parliamentary reform. What were some of these other abuses?

If free speech among members of Parliament was a mirage, their responsibility to their constituents was another. A truly representative government presupposes an informed electorate. Unless an elector knows what the issues debated in Parliament are and how his member has voted on them, representation is a hollow fiction. In Bentham's England, members of Parliament surrounded themselves with a wall of secrecy. If in fact a good deal of information about their activities passed through to the general public, it went like press freedom on sufferance. The wall was not razed; it merely developed holes that were not repaired.

In 1782, for example, the age-old standing orders of the House of Commons against reports of its debates still stood, yet reporters were tacitly admitted. The privilege, however, was precarious, for the House could be cleared of 'strangers' on the motion of a single member. It was another standing order, as Bentham explained, that 'no person do presume without authority of the house to publish any account of what is done or said there'.¹³⁶ In fact the House printed a journal, but that simply listed voting results without comments or reasons. Accounts of debates also appeared in the newspapers, but they were garbled and unavoidably inaccurate because no writing was permitted in the strangers' gallery. Reporters relied on memory bolstered by imagination. These anomalies vexed Bentham. In the House of Commons, he pointed out:

The votes of the members should express the sentiments of the people. . . . It is designed that every seven years the constituents of each member should judge afresh whether he is worthy of their confidence. How are they to know this but by knowing . . . how he has given his vote and what reasons if any he has assigned for giving it? And in nine cases out of ten how can they judge . . . without learning any thing of the reasons? . . .

It is the care of the legislature that the people shall be obliged to exercise their judgment at least once in seven years: and as much oftener as his Majesty shall think fit. It is the care of the House that the judgment thus exercised shall be perfectly groundless and irrational.¹³⁷

He pleaded for full and accurate shorthand transcriptions of debates, completely open access to the visitors' gallery, and publication of all government records.

Despite this swelling catalogue of grievances against the government, it was 1790 before Bentham became a democrat. Why did he wait so long? Certainly the governors sinned against the principle of free communication; but were the governed fit to replace them? How responsible were the popular spokesmen, the journalists and newspaper proprietors? During the 1770s at least, Bentham condemned them as utterly irresponsible and even greater sinners than their governors. Newspapers expressed the popular will and, as far as he could judge, it seemed hysterical and stupid. The rancorous and shrill *Letters of Junius* were typical. The press declined the role of impartial informant and critic that he assigned it, and substituted sound and fury for knowledge. He was particularly disturbed, as we know, by the opposition press monopoly during the American War. In 1776 he complained, 'Perhaps there is not a character upon earth in which human nature shews so much to its disadvantage as that of the Manager of an opposition Newspaper.'¹³⁸ What did this paper contain?

carping in all its acrimony fills up the whole measure of an opposition newspaper. The . . . perpetuity of irritation keeps the malignant passions worked up to the highest pitch. The grand and universal grievance . . . is that . . . [the editor's] idol is out of place: and as this cause continually exists . . . the discharges of bile are as copious and as incessant as the flowing of the Thames.¹³⁹

According to the logic of the will, these men committed major fallacies; they buried political facts under a barrage of dyslogistic emotive meaning. Though Bentham knew it was absurd to call for completely neutral political discussion, he hoped that men might temper heat and alarums with evidence and good judgment.

Gradually during the 1780s the press began to mature. Ironically, as the government became more authoritarian in the 1790s, newspapers became more responsible. Because they were the speediest dispensers of eagerly awaited war news, the public demand for them grew; and as the demand grew, so did commercial advertising. The press could now afford better and more complete coverage. Bentham had always considered prosecutions for libel a major political fallacy, even when newspapers were sheets of calumny. In 1809 he said:

On the subject of *libel law*, my general conception has been of some thirty or forty years' standing: . . . [in] *actual law*, a libel is any paper in which he, who to the *will* adds the *power of punishment* . . . sees anything he does not *like*: . . . [for] public utility . . . [it is not] fitting that *any* part of the *rule of action* . . . should be lying in any such wild and barbarous state.¹⁴⁰

His opinions never wavered. What did change was government's use of libel law as an instrument of social policy and the responsibility of the press itself. He saw a shift in the relative value of sanctions. The moral began to outweigh the political, and the immaturity of the governed was no longer a valid objection to democratic parliamentary reform. As government accelerated its rate of prosecution and blocked avenues of legitimate criticism, Bentham became ever more alarmed and certain that an aristocracy so mistakenly tyrannical must need such a reform. In 1790 repression was only a shadow on the horizon, and he kept his new convictions to himself; but by 1808 the full mass of second-order evil had spread to every corner of society, and he could no longer restrain himself. He became a loud and active democrat.

4. *Signs of Progress: Conclusion.*

Had Bentham persevered with his new science of indirect legislation, it would ultimately have become a completely articulated structure of 'laws', from the most general principles of security, education, and free communication to an exhaustive catalogue of 'phenomenological' rules. It never could have been a boldly experimental science but must always have remained piecemeal and conservative. Its facts were social facts, limited by tradition and prejudice, and Bentham usually kept within these boundaries. He did not demand that Sunday schools be overthrown, merely that clergymen teach on weekdays as well. He did not demand the reorganization of Parliament, merely that the rights of speech and publicity it granted *de facto* be vastly extended and made *de jure*.

In this way, most of Bentham's fragmentary indirect 'phenomenological' projects and inventions were adaptations or extensions of typical eighteenth-century institutions. He particularly valued public essay contests and private cultural and scientific societies. As the Board of Longitude at Greenwich, the

Royal Society, the Society of Arts, and the Oeconomical Society of Bern offered prizes for inventions and essays, so Bentham planned a great series of competitions for the best answers to every problem of law and government.

Voluntary associations like the Royal Society had Bentham's wholehearted support. They were his best evidence for the progress of the moral sanction, for their purpose was purely benevolent. Let them therefore multiply. Let a separate society be founded for every branch of the Encyclopedical Tree, for every possible area of human knowledge. Among them, he suggested in 1773:

Let there be an Academy of the English language . . . [and] let it take in among the objects . . . Language in general, Grammar, Logic, particularly Metaphysics, the intellectual part as opposed to the moral.

An Academy of the Moral Sciences, Political Ethics, and if the times allowed of it, Religion: or rather for the present exclude Religion because [it is] not safe to meddle with: and in future, because there will be found to be nothing in it to meddle with.¹⁴¹

Another of his suggestions was a government clearing-house or patent office for every kind of invention.¹⁴² Though Bentham usually kept within the limits of accepted institutions, there were moments when his imagination soared beyond them. It invariably did whenever he considered the subjection of women, for few social facts angered him more. Throughout his entire life he deplored their inequality. The waste of so enormous a reservoir of potential intelligence was profoundly non-Utilitarian. In the area of women's rights, eighteenth-century England was still barbarian. Everything remained to be done. At the same time, Bentham was well aware how little could be done. Few social issues were more boring to the public or more deeply submerged in prejudice, as he continually observed, from the early *Principles of the Penal Code* to the *Constitutional Code*. Open ardent feminism was an ideological luxury that Bentham could not afford. All the same, he did what he could to further the equality of women. As early as the 1770s he offered a 'Proposal for the restraining of the male sex from the exercise of certain trades: in favour of purity of manners, and of the employment of the female: Staymakers, Hairdressers.'¹⁴³

Among the most curious of Bentham's imaginative flights was a Hall of Fame for legislators. Here the moral sanction served to develop the political. Along with the House of Commons and the House of Lords, Parliament might include a third Chamber of Conference for joint sessions and addresses by the Sovereign. To honour good kings and legislators, their statues would be raised in niches around the four walls. At the beginning of a reign, the new King's statue would be erected at once – but only on probation. After a trial period, the legislature would vote either to keep it as a mark of approval or to banish it to one of two alternative places, the Chamber of Indifference or the Chamber of Disgrace. At the opening session of each Parliament, the members would choose the outstanding members of the previous Parliament. Their statues would then go up.¹⁴⁴

Though Bentham's 'transcendental' legislation sometimes took such quixotic shapes as this, he was always sensitive to the importance of moral rewards for political services. His important and original *Rationale of Reward* may be seen as a branch of indirect legislation, a sustained attempt to replace the customary and often corrupt sinecures, places and pensions of the political sanction with the higher if less tangible honour and glory of the moral sanction.

When Bentham abandoned his analyses of indirect legislation in 1782, his friends at Lincoln's Inn probably thought that he was once again running from a good thing to a better. That was not so. He had reached the turning point of his career. When he laid these fragments aside he also sacrificed a way of knowing and a way of doing. It was an admission that his old methods and hopes had failed and that he must try new ones.

In the ordered hierarchy of Bentham's new science of morals and legislation, from descriptive statements and particular rules through middle-level laws to the supreme greatest happiness principle, indirect legislation is the highest and final bridge between the *is* and the *ought*. It is a grand synthesis of knowing and doing. It presupposes a complete body of particular sciences – psychology, economics, statistics, civil law, penal law, and a wise, benevolent and resolute legislator, determined to apply them according to the principle of utility. It is a kind of moral preventive medicine, resting on a social anatomy of crimes and punishments, a physiology of pleasures and pains, administered by society's most general practitioner.

In Bentham's England a science of preventive legislation was impossible, for neither presupposition held. Though he was prepared single-handedly to meet the first condition, he assumed a sympathetic audience for it. His adventures in search of a sponsor are the subject of the next chapter. Some succeeded; most failed. Why? Reluctantly he conceded that he would never find the perfect Utilitarian legislator. His ideal had been Utopian. There was no new Moses ready to climb the Sinai of Bentham's entire synthesis from pleasures and pains to indirect legislation, returning with the tablets of the law. This concession marked several important shifts in his thought.

He was always an individualist. Before 1782, however, his individualism was descriptive and analytic. It now became prescriptive. He had been a legal analyst and a psychologist; he now became a sociologist. His chapters on indirect legislation are the bridge between his early analyses and his later institutional descriptions. When he asked, what can the legislator do to cultivate the physical, religious, and moral as well as the political sanction, he was forced to widen his own radius of social reference. For the first time he began to explore the world outside the courts: the nature and function of Parliament, the role of a free press and private societies, the uses and abuses of the Established Church, government's responsibility for education and welfare. He began to think historically as well, for sanctions are social habits that have slowly grown from age to age. They take the shape of self-perpetuating institutions, casting generations of men in the same moulds. Bentham now admitted the naïveté of his early individualism. Men do not make institutions. Institutions make men. A child learns the vocabulary of morals and politics from the system of relationships he inherits and is taught – his family, their social class, church and political party; his school and future profession. In 1790 he explained this new insight:

Here, as elsewhere, let us blame establishments, which alone, and not individuals, are justly blameable: for individuals are what the laws have made them. Rare and thankless justice! for the objects of jealousy and enmity are individuals; establishments, in spite of all their faults, often by reason of their very faults, the object of fondness and admiration: – and that in proportion to their antiquity; that is, to the inexperience and ignorance of their authors.¹⁴⁵

Bentham's early individualism had been almost unconscious, a side-effect of his exhaustive analyses. Their final products were discrete units, single pleasures and pains, offences against individuals, individually discriminated motives and intentions. When he condemned an act of government, he condemned this or that stupid or indolent official, not the form of government itself. When he deplored the Establishment, he deplored the effects of subscription and benefices on particular clergymen, not religion in general. This kind of isolation is a danger of the analytic method, for it discourages comparisons and thereby well-grounded generalizations and the growth of knowledge. It leads to a harsh and unrealistic ethical individualism, a doctrine that burdens men with greater moral responsibility than they can bear. When Bentham at last acknowledged the shaping power of institutions over men, he shifted his individualism from *is* to *ought*, from description to injunction. The ideas of men are herd or class ideas, formed by institutions. Let men break away from the herd; let them question their automatic inherited attitudes and learn to think for themselves. This new kind of normative individualism underlay Bentham's later theory of democracy. It led him to announce the Principle of Individual Responsibility, to abolish joint boards as the common type of administrative machinery, and to extend the concept of the Prime Minister in Cabinet to all subordinate political offices.

When Bentham laid aside his chapters on Indirect Legislation, he began a new age of compromise. He no longer ran from a good thing to a better; he now retreated from the best to the possible. Legislators and judges were made of common clay like other men, and were cast in the same institutional moulds. His grand all-comprehensive synthesis was designed for a man who did not exist, a superhuman statesman-metaphysician-lexicographer-moralist. When Bentham at last understood this fact, he saw as well how profoundly non-Utilitarian his attempted synthesis was. The principle of utility demands that art and science, doing and knowing, 'experience and metaphysics must go hand in hand'. He had broken his own commandment, for his theoretical synthesis had far outrun the desire or ability of anyone to practise it.

In 1782, then, Bentham faced an urgent embarrassing problem: how could Utilitarianism once again become Utilitarian? How could he narrow the distance between know-

ing and doing? The obvious drastic solution, that he sacrifice *knowing* entirely to *doing*, was not open to him. Bentham analysed and synthesized despite himself. He could no more abandon these activities than he could stop the tides. Instead, he found a more subtle solution. Unable to find an audience for his new art-and-science, he now frankly split it into esoteric and popular halves, and hid the more arcane underground. For the next twenty years he relaxed his system-mongering and focused rather on doing than on knowing.

What then did Bentham try to do? For fourteen years, from 1768 to 1782, he had tried to join knowing and doing by finding a new Moses skilled in both, and failed. Among whom had he sought an audience? He tried to join science and art in another way, through his younger brother Sam. Was he any more successful? Finally in 1781 he found a patron, the great Lord Shelburne, who was Prime Minister from 1782 to 1783. Bentham's hopes soared. It seemed that he had at last found the perfect legislator. But once again he was disappointed. All the same, these years of intimacy with Lord Shelburne, from 1781 to about 1791, were the happiest of Bentham's life. Lord Shelburne swept him from the still backwaters of Lincoln's Inn to a whirlpool of political intrigue, sophistication, and luxury. Lord Shelburne opened up one universe after another for Bentham: party warfare, parliamentary government, colonial policy in general, Ireland and India in particular, the Poor Laws, foreign policy, and finally and most important, the French Revolution. Bentham rejoiced in these discoveries. One after another, they were virgin fields for Utilitarian exploration. Eager to apply his principles, to transform an abstract science into a wide-ranging art, to harmonize knowing and doing, Bentham happily abandoned his analyses.

CHAPTER 6

¹ B. 27, p. 161.

² B. 27, p. 163.

³ See above pp. 24 and 136.

⁴ VIII, 27, *Chrestomathia*.

- 5 B. 101, p. 199, 24 October 1826.
 6 VIII, 218-19, *Logic*.
 7 VIII, 222-23, and *Chrestomathia*, VIII, Appendix.
 8 B. 27, p. 13.
 9 IX, 23, *Constitutional Code*.
 10 I, iv; Hafner, xxxi
 11 A. M. 33549, p. 1.
 12 I, 367. 13 II, 204.
 14 I, 304-5, *Principles of the Civil Code*.
 15 *Johnson's England*, *op. cit.*, II, 269.
 16 II, 212, *Rationale of Reward*.
 17 IX, 201, *Constitutional Code*.
 18 III, 224, *Pannomion*. See also VII, 81.
 19 B. 96, p. 116, 1770s.
 20 B. 14, pp. 10-11, 1770s.
 21 *Ibid*.
 22 B. 96, p. 118, *ca.* 1773.
 23 B. 96, p. 117, *ca.* 1773. I have changed Bentham's notation slightly to conform to modern usage.
 24 III, 215.
 25 X, 567. 26 X, 562.
 27 A. M. 33549, p. 28.
 28 III, 265, 272. 29 III, 265. 30 III, 253.
 31 Macaulay and Schumpeter are two among many examples. See Introduction above, pp. 11-12.
 32 III, 215.
 33 B. 146, p. 14, 1791-2.
 34 VIII, 76, *Chrestomathia*.
 35 VIII, 111, *Chrestomathia*.
 36 VIII, 100, *Chrestomathia*.
 37 B. 69, p. 72, *Preparatory Principles*, 1770s.
 38 I, 291, *A Fragment*.
 39 I, 146. 40 VIII, 100. 41 VIII, 276.
 42 *Ibid*.
 43 VIII, 125. 44 VIII, 261. 45 VIII, 100. 46 VIII, 116.
 47 VIII, 261, *Logic*.
 48 See Appendix C below; also VIII, 276, *Logic*.
 49 II, 205, *Rationale of Reward*, originally written *ca.* 1775-80.

- 50 'The Mystery of Matter', *Adventures of the Mind*, ed. Thruelsen and Kobler (New York: Vintage Books, 1960), p. 74.
- 51 *Commentary*, August 1958, p. 164.
- 52 Stephen Toulmin, *The Philosophy of Science* (London: Hutchinson's University Library, 1953), pp. 50ff.
- 53 *Ibid.*
- 54 VIII, 74.
- 55 *Ibid.*
- 56 *Ibid.*, 178ff.
- 57 VI, 216.
- 58 Toulmin, *op. cit.*, 53.
- 59 *Ibid.*, 166.
- 60 B. 27, p. 161.
- 61 Toulmin, *op. cit.*, 166.
- 62 *Ibid.*, 165.
- 63 VIII, 230, *Logic*.
- 64 S. E. Toulmin, 'Crucial Experiments: Priestley and Lavoisier', *Journal of the History of Ideas*, April 1957.
- 65 Toulmin, *The Philosophy of Science*, *op. cit.*, pp. 80ff.
- 66 I, 195-219.
- 67 III, 294, *Logic*.
- 68 III, 312.
- 69 B. 146, p. 24.
- 70 II, 270, *Leading Principles*.
- 71 X, 561, *Logical Arrangements*.
- 72 II, 112, *Principles of Judicial Procedure*.
- 73 IX, 490ff. *Constitutional Code*.
- 74 IX, 577ff. *Constitutional Code*.
- 75 II, 112. 76 I, 304ff.
- 77 B. 27, p. 20.
- 78 III, 230.
- 79 Toulmin, *The Philosophy of Science*, *op. cit.*, 18.
- 80 T. D. Weldon, 'Political Principles', *Philosophy, Politics and Society*, *op. cit.*, pp. 26-7.
- 81 B. 27, p. 113, 1770s.
- 82 B. 149, 63.
- 83 I, 322. 84 I, 325.
- 85 B. 87, 27.
- 86 B. 87, 15.

- 87 B. 96, p. 255, p. 261, *ca.* 1773.
- 88 III, 25.
- 89 See Werner Stark, *op. cit.*, for dozens of Bentham's fiscal and technical remedies.
- 90 B. 69, 167, *Preparatory Principles*, 1770s.
- 91 B. 87, 25.
- 92 B. 5, folio 5.
- 93 *Ibid.* For some examples, see the early unpublished *Critical Elements of Jurisprudence*; *The Rationale of Reward*, II; and *Swear Not At All*, V.
- 94 B. 97, 48, *ca.* 1773, 'Obstacles to Improvement'.
- 95 B. 5, folio 5.
- 96 B. 97, 110.
- 97 B. 96, 316, *ca.* 1773.
- 98 B. 82, p. 23.
- 99 B. 96, 266.
- 100 B. 27, 9.
- 101 B. 169, 113.
- 102 I, 326, *Civil Code*.
- 103 X, 354. 106 VII, 116-17.
- 104 The few pages in *The Theory of Legislation*, the English translation, 'Employment of the Motive of Religion', pp. 434-42, are very different from Bentham's opinions.
- 105 Quoted by Walter Kaufmann, *Nietzsche* (New York: Meridian Books 1956), p. 289.
- 107 *The Theory of Legislation*, *op. cit.*, p. 371.
- 108 B. 87, 43.
- 109 *Ibid.*, 18.
- 110 II, 48-9; V, 451-2; VII, 263-70.
- 111 *The Theory of Legislation*, *op. cit.*, 371-2.
- 112 Harold Laski, *Political Thought in England*, *op. cit.*, p. 157.
- 113 B. 27, 13.
- 114 *Deontology*, I, 129-130, my italics.
- 115 I, 56.
- 116 *The Theory of Legislation*, *op. cit.*, 431-2.
- 117 *Deontology*, I, 167-8.
- 118 IX, 309.
- 119 B. 25, 120.
- 120 I, 161. 121 II, 8.
- 122 B. 100, 34.

- 123 B. 97, 19.
- 124 I, 230.
- 125 *Deontology*, I, 100-01.
- 126 I, 288.
- 127 B. 96, p. 141.
- 128 VIII, 494.
- 129 B. 96, p. 241.
- 130 *Ibid.*
- 131 B. 87, p. 112.
- 132 Francesca Wilson, *op. cit.*, p. 111.
- 133 IX, 159.
- 134 B. 149, pp. 3-4.
- 135 B. 87, p. 112, 1782.
- 136 B. 87, p. 114.
- 137 *Ibid.*
- 138 B. 149, p. 9.
- 139 B. 153, p. 232.
- 140 V, 65.
- 141 B. 96, 343.
- 142 Stark, I, 54.
- 143 B. 97, stray sheet.
- 144 B. 97, 31, *ca.* 1773.
- 145 IV, 406.



Part III

Doing

1768-1790



Voyages and Discoveries

The Search for an Audience:

1768-1781

*'Es bildet ein Talent sich in der Stille;
ein Charakter sich in der Strom der Welt.'*

GOETHE

On Home Shores.

Day after day, month after month, year after year, Bentham sat quietly in his damp, gloomy rooms at Lincoln's Inn and wrote fifteen folio pages. He was only twenty in 'that wonderful year' 1768, yet the tranquil, methodical, semi-monastic routine of his life was already fixed. It was a pattern of unending, hard, lonely work, occasionally broken by long solitary walks, long talks with fellow students who early recognized his genius and devoted themselves to him; and much longer dutiful family dinners presided over by an officious and uncomprehending father. Every summer he wandered with friends through remote parts of the English countryside or boarded at local farms, helping a bit with the haying, playing battledore with the children, and creating codes as usual.

Bentham followed this placid routine in 1768 and he still followed it in 1781. Had nothing changed? Nothing – and yet everything. He continued to do the same things but all his joy in them was dead. During these thirteen years his routine was set in a calm even track, but in his efforts to join knowing and doing he had been cruelly pitched from one barren hope to another, and by 1781 he was hurt and dispirited. After Bentham discovered Helvétius in 1769 he was radiant with a vision of a splendid Utilitarian future. By 1781 he had plunged from high passion to a 'bottomless pit of humiliation',¹ as he told Bowring fifty years later.

How did this change come about? What had Bentham hoped

to do and how had his dreams been shattered? Over sixty years later he explained his early innocent enthusiasm to Bowring.

No sooner had my farthing candle been taken out of the bushel, than I looked for the descent of torches to it from the highest regions: my imagination presented to my view torches descending in crowds to borrow its fire. Of disposition in the midst of such excellence, with which, as all pens and voices concurred in assuring me, I was so abundantly encompassed, I could not suspect any deficiency: for clearing away the imperfections which still remained in Government, all that was wanting was a few of those lights which, I could not tell how, had happened to take my mind for their first visiting place.

Nothing could be more opposite to the truth.²

Bentham's image of descending torches was another way of describing the harmony of knowing and doing, through a legislator-Moses who would combine them.

By 1781, however, Bentham's candle often flickered, died out, and needed to be relighted. He suffered periodic fits of psychosomatic blindness. Under the tender care of loyal friends at Lincoln's Inn, George Wilson and James Trail, he slowly began to see again. Wilson especially was a marvel of devotion, hovering tirelessly over him, reading and writing to him, bathing and bandaging his eyes. Evidently Bentham needed this loving attention, for he always recovered and once again took up his thankless analyses.

In 1784 he went blind again. This time his melancholy was so profound that it almost shattered his set ritual of work. Near desperation, he wrote to his friend James Anderson* in Edinburgh:

* The economist (1739-1808). Bentham respected few people more, and most of those he admired - John Howard (1726?-1790), the prison reformer; Patrick Colquhoun (1765-1820), police magistrate and pamphleteer; Francis Place (1771-1854), tailor, political reformer, Bentham's disciple, editor, and business manager - were the same type of careful, hard-headed, factual man. He contrasted Dr Anderson and Arthur Young, celebrated for his rural rides and books on 'scientific' agriculture. Dr Anderson, he explained:

is a solid man who speaks and writes not from imagination but from experience: in point of real knowledge worth a thousand Youngs. Young is like the alchemists. . . . According to him a man has nothing to do but to turn

My eyes grow worse and worse. . . . What to do with myself in the event of my being obliged to give up reading as I have done these two or three days, I do not know. I have no relish for any thing that is commonly called pleasure. The conversation of my old friends . . . is become insipid to me. My own ideas are become no less so: for the task of invention has for some time been accomplished, and all that remains is to put in order ideas ready formed . . . it has come into my head that perhaps the best . . . thing I could do for my eyes (for if I were to hang myself for melancholy they would be no great gainers in the long run) would be to go a begging to you at Edinburgh for some of your company. In that case the journey . . . would serve pretty effectually to keep my eyes from poisoning themselves. . . .³

Nor were Bentham's eyes his only anguish. He was often exhausted by overwork. In 1774 he complained to Sam:

It has been a lie-a-bed-day with me; tho' not to a degree utterly enormous, yet to a degree sufficient to make me at once uncomfortable and stupid. It is [a pain to me] . . . much the same sort of pain to hold a set of ideas steadily in my mind, as it is to hold a heavy body steady in my hand.⁴

In a candid moment, he suspected the real source of his many 'ailments':

But the Lord hath been tolerably grievous to me today. And it is wonderful how the state of my health depends upon that of my mind. I believe, should the public be tolerably indulgent to me (my ever-honoured Lord and Master, the Public) I should be a new creature.⁵

His great vision of a complete new science of morals and legislation filled all his days, and sometimes even his nights. He once described a dream:

The world is persuaded not without some colour of reason that all reformers and system-mongers are mad. . . . Formerly they used to live upon grass-hoppers in deserts: . . . Now they live in garrets:

Farmer, and he may be as rich as Croesus whenever he pleases. If this be the case, then pray, Mr Young, how comes it that you prefer the trade of book-making to that of Farming? (A. M. 33539, 55, 31 May 1780, to Sam Bentham).

Bentham thought so highly of Dr Anderson, in fact, that he tried to recruit the entire family for his Russian journey in 1785. (A. M. 33540, 82-4.)

from whence in due time they are removed to Bethlehem, not of Judah, but of Moorfields.

My madness has not yet, as far as I can perceive myself, gone beyond a dream. I dreamt t'other night that I was a founder of a sect; of course a personage of great sanctity and importance: it was called the sect of the Utilitarians.*

Before the new sect could become a great religion, it needed a sacred literature and an army of disciples. Bentham understood this very well and at once tried to provide them. His many-levelled new science reflected more than a phenomenally fertile genius, continually confidently soaring from the concrete to the abstract, but was an implicit attempt to create a sacred literature powerful enough to win disciples. Aware of men's small capacity for speculative flights, Bentham insisted that unapplied theory is worthless, and offered them an unending series of immediately practicable Utilitarian projects and inventions.

We have already seen some of his more spectacular schemes: a Junctiana Proposal for a canal through Nicaragua; a Frigidarium; the legislators' Hall of Fame, as well as his favourite project for multiplying projects, the proliferation of private societies and prize essays. But he drew up literally hundreds of other proposals, some trivial, some important, some re-investigated, others laid aside for ever: suggestions for manuals, hand-books, charts, statistical tables; for the citizen, legislator, judge; for different kinds of courts – special cases, debts, duelling, small claims.

His mind was a *perpetuum mobile* of pragmatic invention, so prodigal of ideas that they threatened to overwhelm him. During the 1770s he was unable to do more than list them and pass on. In the following decades, however, he took the most important of these fragmentary schemes down from the shelves and developed them. The fundamental one was a code of judicial procedure, a companion to his codes of civil and penal law that would eliminate delay, expense, complexity, obscurity, and uncertainty. From an early hasty memo Bentham began thirty years later to create his great *Rationale of Evidence* and the unfinished *Principles of Procedure*.

* B. 169, 79, no date, before 1780? John Stuart Mill is usually credited with discovering the word 'Utilitarian' in Galt's *Annals of the Parish*. By that time Bentham and his friends had been using it for forty years.



Henry Roscoe, 'Westminster Hall'.

William Murray, Lord Mansfield.



National Portrait Gallery, London.

Sir William Blackstone. Portrait attributed to Reynolds.

Another project on his list was a 'Proposal for a new model or total removal of the Taxes on adversary Law Proceedings, showing them to be in their present form the worst of all Taxes that can be imposed.' This was a life-long preoccupation, expanded in *Protest against Law Taxes*⁶ in 1793, and repeated for the last time in the *Constitutional Code*. To replace legal fees Bentham suggested:

1. A Tax on Sales of Lands.
2. A transfer to the Public of the rights of remote relations to the Estates real and personal of Intestates.

This was another life-long preoccupation, and Bentham's favourite device for reducing social inequality. He developed it most fully in *Supply without Burthen or Escheat vice Taxation* in 1795.⁷

From the very beginning of his career Bentham deplored the English system of sinecures and offered 'An Utopian proposal for the reducing the National Burthen by the consolidation of places of small business and suppression of Sinecures in Church and State after the decease of the present holders and of those who have the right of appointment.' Later he was not so tender towards sinecurists. In the hundreds of pages he wrote on parliamentary reform from 1809 onwards, he was not always willing to wait for death to end the appointment.

Another favourite subject was forgery, a very serious crime in eighteenth-century England, when money often was the measure of justice. In the 1770s Bentham issued a 'Proposal for rendering Forgeries more difficult by Paper-marks, indischargeable Inks, and other expedients.' In 1800 he expanded it in a pamphlet on forgery prevention which he sent to the directors of the Bank of England.⁸

Finally, he suggested '*Rule of debate* – Or an Essay on the rules usually observed in public assemblies for the convenience of debate, with the reasons for their establishment.' These rules of political procedure played the same fundamental preliminary role in Parliament that correct legal procedure played in the courts. Unable to spare time from his civil and penal codes, he tried in vain to persuade George Wilson to do the urgent job. At last in 1788, inspired by the prospective meeting of the French Estates General, Bentham drew up these rules himself.⁹

By 1780, then, how much had Bentham done? How strong

was the new Utilitarian sect? He was single-handedly giving it an enormous sacred literature, still a mass of unfinished fragments but nevertheless an encyclopedic survey of all human thought and action. But where had he sought disciples? Had he found them?

For the first few years after 1769 Bentham did nothing to seek them out. Thrilled with the importance of his discoveries, naively arrogant, he tended his Utilitarian fire at Lincoln's Inn and waited for torchbearers. None came. He wrote for the judges and assumed their disinterested public spirit. As we have seen, he idolized Lord Mansfield and was mystified and badly hurt by his neglect.

By 1774 Bentham understood that he would have to work for recognition, and saw his opportunity in John Lind's abandoned critique of Blackstone. He wanted to re-create the noisy scandal of the slashing anonymous *Letters of Junius*, and modelled *A Fragment on Government* on them. In the beginning his strategy worked well. Gossip and rumour flew. Who could have written *A Fragment*? In a long intimate letter to the Reverend John Forster* early in 1778, by far the best autobiographical account Bentham ever wrote, he described the transient furore it aroused.:

It has been attributed to five or six of our first-rate geniuses. To Lord Mansfield, Lord Camden, Mr Dunning; Mr Gibbon, author of the history of *The Decline of the Roman Empire*; Mr Lind, author of the *Letters on the State of Poland* . . . Dictionary Johnson was sure of its being Dunning's. Others who were more in the secret knew it to be the joint production of Dunning and Lord Camden. Mr Pulteney, known to the great world by being the Inheritor of the Bath estate . . . went to one of the Booksellers to ask who was the Authour: for he wanted to give him a Brief. The Authour's answer was respectful but short: 'that he takes no Briefs.' Lord North, I find, has read it and approves of it. As far as I can learn almost every body approves of it, the warmth excepted, which almost every body condemns.¹⁰

Then Bentham's father's pride overruled his prudence, and he let the secret out. The gathering tumult died at once. Once

* Who was then in St Petersburg as clergyman to the Duchess of Grafton. An earlier older friend, Forster, had expected much from Bentham, had been disappointed in his seeming lack of ambition, and dropped the acquaintance. In this extraordinary letter Bentham sought to renew the friendship by explaining and justifying his dedication to legal reform.

again Lord Mansfield failed Bentham: he read *A Fragment*, delighted in it, and continued to ignore the author.

All the same, Bentham's strategy had been the right one. Though damaged by his father's indiscretion, *A Fragment* was by no means a total failure. It may not have converted Lord Mansfield, but certainly it hit Blackstone himself, who not only read but heeded it. Bentham explained to Forster:

How blameable soever may have been the temper manifested in it, the motives are such as I have no reason to be ashamed of: they are not of a personal nor so much as of a party nature. . . . I never have had . . . the least ground of complaint against Sr. William. He has lately published a new edition of the *Commentaries* in which he had made several alterations, though with but an indifferent grace, in consequence of my book, which he has glanced at in an angry Postscript to his Preface. He told Lord Mansfield that he knew of what country I was, by my Scotticisms: and what is more, that I was a Dr. Gilbert Stewart.¹¹

Nor was this the only time that Blackstone heeded him. Early in 1778 Bentham acquired a copy of the Eden-Blackstone prison reform Bill before its first reading in Parliament. In three weeks he dashed off a pamphlet, *A View of the Hard Labour Bill*,¹² praising its many good features and suggesting improvements for the bad ones.

Blackstone and Eden listened to his suggestions and included some of them in a revised Bill. Bentham was very pleased. When he wrote about indirect legislation in 1782-3, he offered this experience as evidence of the benefits of complete publicity.

Of the advantages that might reasonably be expected from a free and timely circulation of parliamentary projects through the body of the nation I can not give a more apposite instance than the use [that] . . . was actually made of a few hints suggested by one of the most insignificant of its individuals.

In the year 1779 the Bill for establishing the penitentiary houses . . . passed into an act. Early in the year preceding a printed draught . . . came into my hands . . . I published a view accompanied with a multitude of observations, some exhibiting arguments in favour of the several clauses, others suggesting what appeared to me . . . imperfections. . . . I had the satisfaction of learning from the late Mr. Justice Blackstone that many of my observations . . . would . . . be profited by. Upon looking over the bill after it had

passed into an act, it seemed to me that about half of them were in the latter predicament.¹³

These were small triumphs. Sir William Blackstone was certainly no Utilitarian torchbearer; he merely borrowed a little of Bentham's light. None of the judges was ripe for conversion.

But many lesser known men were. They read *A Fragment* and *A View*, and made the pilgrimage to Lincoln's Inn. Though Bentham always bitterly complained about the 'neglect' and 'obscurity' he suffered during these early years, he was neither neglected nor obscure. He thought he had been because his memories flowed together. Remembering the child Jeremy for whom admiring adults predicted a brilliant future; remembering the middle-aged man, confidant of the renowned Lord Shelburne who ushered him into a glittering world of wealth and sophistication; he then remembered the years between as a grey age of isolation.

But he was always surrounded by loyal admiring friends. At first there were younger acquaintances of his father's like Chamberlain Clarke and John Lind, who was so devoted that he took rooms near-by and called every day; then fellow students like George Wilson and James Trail; then many poor and foot-loose foreigners, like the future Girondin leader Brissot* and F. X. Schwediaur, a German doctor-adventurer. All were sure that Bentham was a genius.

Among those who came to No. 6 Old Buildings was the future Lord Erskine, Tom Paine's defence attorney in the 1792 trial and Lord Chancellor in 1806-07. In 1776 he was still an impoverished and unknown law student. Bentham recalled:

He was so shabbily dressed as to be quite remarkable. . . . I remember his calling on me and not finding me at home: he wrote his name with chalk on my door.¹⁴

When they met at last, Erskine was astonished to discover that Bentham did not mean to practise law.¹⁵ Their conversation was, in a small way, historic: two brilliant young law students at a

* Who left an ecstatic picture of Bentham, beginning, 'Reader! has your imagination ever attempted to trace the portraits of those rare beings, whom Heaven sometimes sends down upon earth as a consolation for woes, who, in the form of imperfect man, possess a heavenly spirit.' X, 192ff.

crossroads, debating which turning to take. Erskine took the high conventional road through legal practice to the Lord Chancellorship, and Bentham the low road through legal reform. In an unpublished 'Open Letter to Lord Erskine', written in 1819, Bentham remembered the meeting.

'Why quit your profession?' said your Lordship to me some two and forty years ago. . . . I loathed it – I was not fit for it. What sacrifice did I make?

In my composition I happened to have a larger share of sympathy than falls often times to man's share. In my nurses' arms, I remember still the occasion I felt the first dawn of it. Coming in a favourable age it received expansion after expansion, till it extended itself over the planet in which we live. How can I so well gratify it as by planning these arrangements which, on condition of being . . . an object of affected contempt and real fear and hatred as long as he lives, [a man] . . . may be worshipped for when he is dead.¹⁶

Of all the new friends who came to Lincoln's Inn, none was more welcome than John Howard, the prison reformer, a hero whom Bentham never tired of eulogizing. Bentham became a reformer because he could not do otherwise, but he was always uneasily defensive about it. Erskine was only one among the chorus of uncomprehending critics. Neither his father nor the Reverend John Forster nor George Wilson sympathized with his renunciation of conventional ambition. Over and over again Bentham tried to justify his decision, and John Howard's example was invaluable to him. Near the beginning of his long letter to Forster, he explained:

The fact is, I live in the same dirty chambers, and as obscure and as poor as when you knew me. Law-mending *sine-privilegio* is a sad trade for a man to thrive by: there are few to practise it and but still fewer to encourage it. If a man does not get pointed at as an idiot or knocked on the head as a nuisance, he may think himself well off. No matter . . . I have no idea of repining at my condition: so far from it, that I believe this is the first time I ever thought it worthwhile to say so. For the first year or two after my being called to the Bar I had a little practice. When these projects [of law reform] came into my head, I insensibly withdrew myself from business. When I had mustered up courage enough, I [turned] . . . to face my father . . . and took leave of my clients to [his] . . . great discomposure. . . . Since then comes every now and then a straggling client who has not heard

of my resolutions: in the private sense of the word I thank them all. I have given myself to the Public. I never will sell myself to individuals. Why should I? Mr. Howard has sacrificed his time, his security, and his fortune. Fortune I have none: the sacrifice of my security is not at stake: why should I grudge to sacrifice my time? Mr. Howard and the public honour he has met with, are of more use to me than you would imagine to prove to my friends that I am not crazy.¹⁷

Bentham continued with a long, vivid, and entertaining account of Howard's history and habits. Perhaps some extracts may serve to show the kind of model that he set himself.

You certainly must have heard of [Howard] . . . before you went [for] . . . the extraordinary tours he took all over England, and a considerable part of the continent, merely for the purpose of inspecting the state of the prisons, in order to suggest improvements in that branch of the police. I had not the least personal acquaintance with him: but he paid me a visit t'other day of his own accord on the occasions of the *View of the Hard-Labour Bill*. . . .

He is a country gentleman of handsome fortune, and but for an electioneering quirk of the Ministry would have kept his seat for Bedford in the last election. He is . . . one of the most extraordinary men this age can shew. For these 4 or 5 years past he has devoted the whole of his time to this one object. . . . He has a constitution [of] . . . iron . . . yet observes a severity of regimen. . . . While upon his travels he allows himself every *other* night for sleeping. He breakfasts on tea and bread and butter, eats no dinner, and sups on milk and vegetables. Fermented liquors he drinks none. With all this his complexion is florid and his frame robust. He fears no contagion: he has been in many a gaol so pestilential, that the gaoler himself has not set foot in it for months. He is no crackbrained enthusiast. The qualities of his head are scarcely inferior to those of his heart. His book is a model for method and for the sort of style that is competent to his subject. He carries his plan with him in his head. He is set down at the door of a prison, makes enquiries under a certain number of heads which exhaust the subject, does his business and drives off again to another. His thoughts, his conversation, his writings are confined to this *single* object. Prospects, palaces, and pictures he passes by with an indifference equal to that of the cynic and much better grounded. He is so well known now among the class of people he has to deal with, that his name flies every where before him. Honest gaolers receive him with open arms: dishonest tremble at his approach. He renders both sorts alike pliant to his purpose: the one by their hopes, the other by their fears. His discourse is as fluent as ready: his eye

piercing. Practice has made him familiar with all their arts and all their ways. . . . He is accurate to an extreme: takes nothing from report: and asserts nothing but what has come under the cognizance of his senses.¹⁸

Grateful as Bentham was for these new attentions, they did not satisfy him. By 1778 the furore created by *A Fragment* had died; he still had not found a powerful patron; and he began to seek a new, more effective way to join knowing and doing. For a few days in 1778 it seemed that he might repeat Hume's excursions into the public service. As Hume went to Paris as secretary of the British Embassy under Lord Hertford in 1763, so Bentham tried to join Governor George Johnstone's mission to America. This was his first exploration of the great world beyond the courts, and when his efforts failed, he learned his first lessons in nepotism and wire-pulling. In the same autobiographical letter to Forster he explained:

I thought myself within an ace t'other day of being of [the] . . . party to America: Governor Johnstone . . . I had heard was very fond of the *Fragment*, and used to carry it about with him in his pocket.¹⁹

Shortly before sailing, Johnstone invited Professor Adam Ferguson along, not officially,

but as a friend for the sake of company and advice. . . . The warning was so short, that it appeared probable that Ferguson might not have time . . . to accept the offer. It occurred to me in the instant that if he should not, it might not be impossible that the Governor . . . might be willing to take *me*. The company I thought would be agreeable, the sea voyage would be of service to my health, and . . . the expedition might give me a little practice in public business. I therefore went immediately to a friend of mine who is intimate with Johnstone, to whom he proposed it without loss of time. . . . [Johnstone] said if he could but get me, he should think he had got a treasure, thanked my friend for mentioning it, but chid him for not mentioning it before: regretted he had sent for Ferguson, and that it was too late to countermand him: but said that he was to have two gentlemen with him, the other a Barrister of our Inn who had been recommended to him by his brother Pulteney (Pulteney you know was originally a Johnstone, and took his name for the Bath estate) that he would take

me in either of two events: if Ferguson did not come at the time expected, or if Mr. Pulteney could be prevailed on to let him off with respect to the other gentleman: observed that he (Johnstone) was under great obligation to his brother, that he was dependent on him, and therefore that if he should peremptorily refuse to let him off, there was no remedy. For he was so circumstanced, that it was necessary for him not to quarrel with his brother. . . . He concluded with saying that he would go and talk with his brother that instant, and would immediately acquaint my friend with the result. This was on the Friday: the Commissioners set off for Portsmouth the Tuesday after. Would not you have imagined that some sort of apology or at least some answer would have been made to me? Not a syllable has my friend heard from Johnstone to this hour. . . . To love mankind, says Helvétius, one should expect but little of them. I do expect but little of them, and am therefore seldom disappointed, and never vehemently.²⁰

Once again Bentham was forced to look for a new way to apply Utilitarian theory. He chose to publish another book, not a polemic like *A Fragment* but a serious analytical exposition of the fundamental principles of utility. From among the thousands of scattered pages he wrote in the 1770s he assembled *An Introduction to the Principles of Morals and Legislation* and printed it in 1780. The two were different books, designed for different purposes. Though also a serious exposition of Utilitarianism, *A Fragment* was necessarily parochial, limited in its subject to an attack on Blackstone's version of English law and in its audience to a small class of educated Englishmen. *The Principles* was meant to be universal, appealing through its general principles to all men at all times. Unable to find powerful disciples at home, Bentham now began to look for them abroad; and *The Principles* marked his changing course.

Disillusioned as he had by 1780 become about the reforming zeal of Englishmen, however, Bentham had not yet abandoned all hope. Before he distributed copies of *The Principles* to European statesmen, he explored a few remaining English possibilities.

Party affiliations meant as little to him as technical forms of government. A good Utilitarian might be a Tory; he might be a Whig. Lord Mansfield had failed him, but so had Lord Camden. As a last resort, he appealed to his future arch-enemy, Edmund Burke. In a letter unique for its tone of pleading Bentham wrote:

If I am not very much deceived in you . . . there is that sort of sympathy and bond of union between you and me, that the great object of life is the same in both of us. We have both . . . been toiling in the track of public service: you diligently and splendidly: I in silent obscurity, but perhaps with not inferior diligence. Sufficient proof of this . . . you will find I believe in the book which accompanies this letter. . . . [probably *The Principles*]

Looking on you as a martyr to so many excellent causes, to toleration and to freedom of trade, to so many other points of sound and generous policy, etc., your late disappointments [Burke had lost his parliamentary seat for Bristol after championing the unpopular causes of freer trade with Ireland and Catholic emancipation] have but endeared your character to me the more.

As to the object of this address, it is what I will not dissemble. I will speak out. I am doing then with regard to you what I never yet did for any man who stood above me, make the first advances towards a personal acquaintance. I am certain that from an intercourse and a friendship if I should be found deserving of it, I should reap to say nothing of reputation a degree of delight and instruction which I know not where to look for elsewhere: as to any advantage which you on your part could reap from mine, I fear that if you see no ground . . . in this book I have no better title than that to rest my hopes upon.

I am a self-conceited man, as all system-mongers who converse much with themselves and little with the rest of the world are apt to be, and as a system-monger must be.

Should you chance to think it worth while to make any enquiries in Lincoln's Inn, you will find few who can tell you very good, but what is more consolation none I trust who can tell you any harm of me.*

To exhaust the final possibility, Bentham even planned to send *The Principles* to George III, accompanied by this letter:

If it were pardonable in me to suppose your Majesty might have prejudices I should fear they would not be in favour of this book. Accordingly though I have taken the boldness to offer it to your Majesty, I must confess it is not with any very sanguine expectations

* B. 169, 74, ca. 1781. Bentham's enthusiasm was short-lived. Thereafter Burke was anathema and Bentham attacked him continually, using the same exaggerated rhetoric that he loathed in Burke. Here is an egregious example, condemning the hysterical results of Burke's *Reflections on the French Revolution*: 'Blinded by his rage, in this his frantic exclamation, wrung from him by the unquenched thirst for lucre – this mad man, than whom none perhaps was ever more mischievous – this incendiary, who contributed so much more than any other to light up the flames of that war, under the miseries occasioned by which the nation is still groaning' (II, 404-5).

of its being well received. But being about at present to present it to foreign sovereigns I thought I should be wanting in duty and respect where most is due were I to omit offering the same tribute to my own. Yet it was written for Kings: and if it cannot be of use to them it can be of use to nobody. It suggests ideas which Sovereigns alone and not private persons can carry into execution. It is directed to that object, to which I make no doubt but every action and thought of your Majesty's life is ultimately directed, the promoting of the public welfare.

It is not the work of a day, nor has it anything to do with the politics of the day: objects which in a certain sense I am below, and in another sense, above.

I thought it might prove good for something, or I should not have spent 5 years upon it: I do think it now good for something, or I should not [be] . . . forwarding it to the notice of your Majesty.²¹

From grand visions of a new Utilitarian sect, of disciples and torchbearers lighting the world with flaming new truths, to this wan and forlorn note had Bentham fallen. His disappointment was bitter and by 1781 he suffered regular fits of gloomy hypochondria. Yet he had known all along that he would be disappointed. Time and time again he had prepared himself for martyrdom. In fact he was so keenly aware of prejudice that he made it part of his logic of the will. 'Objections' or 'Obstacles to be overcome' were a sub-branch of 'Fallacies' and a standard part of his analyses. He despaired so of reformers' fates that he even defined government officials as anti-reformers. Around 1778 he explained:

The Projector is the natural enemy of the man in office. Ask the man in office, the Projector is always either a Knave or a madman.

The bulk of men have their motives for disliking and being jealous of projectors. Men in office have an additional one, to wit, indolence. The public spirit and laudable pride which can surmount the influence of these motives are but the lot of a few. To the bulk of men it belongs to give currency to names. . . . Accordingly the name of projector and the name of schemer which is synonymous, are both marked by a note of reprobation. The inventor, so long as he keeps his invention to himself, is looked upon without aversion. But if he makes his invention known and proposes it for imitation, that is, if he makes it of any use, he then becomes a schemer, a projector. He then becomes an obnoxious man. . . . He becomes a standing butt for men of wit without candour or public spirit to let fly at.

After all, what is the fair definition to be given of a Projector? The Projector is one who seeks to promote his own interest through . . . the public by some extraordinary exertion of the inventive faculty. The man in office is one who promotes his own interest at the expense of the public, either without promoting the interest of the public at all or without promoting it more than he is obliged to do. For if he does promote it more than he is obliged to do, he is then *ipso facto* a reformer, a schemer, a projector.²²

During the 1770s Bentham drew up dozens of prefaces for books he never wrote. A common theme of apology runs through most of them. He frankly conceded that law reform was offensive, though unavoidably so. He begged forgiveness for his dryness, asperity, prolixity, and attacks on prejudice. Everyone, he agreed, would find something to annoy them. Let them be comforted by the knowledge that their opponents would be at least equally annoyed.

He also drew up systematic catalogues of the opposition he expected: mental habits, prejudices, special class and professional interests; the antagonism of lawyers, clergymen, Whigs, Tories, and all who shared in the present distribution of power. These catalogues filled him with despair:

From these weaknesses of the imagination and the affections we may make it pretty apparent *a priori* that even a perfect code of laws, should such an one descend from heaven, would find the bulk of men insensible to its merits. Now if these are the disadvantages which even perfection itself would have [to] encounter, with how much greater difficulties must the feeble pen of an obscure individual have to struggle.²³

In one of his unpublished prefaces, Bentham saw the one small glimmer of hope that carried him through the 1770s.

I know the dilemma in which I stand in common with every innovator. The fate of this book I see and am prepared for. If not entirely neglected, it will be vehemently censured. Many positions in it will be found obnoxious to prejudices that are popular. I know . . . the disingenuity and spleen and precipitance [that people are plunged] . . . into upon these occasions. These positions will be brought forth, and circulated, and commented upon, and declaimed at, without any notice taken of the arguments which led me to them; which alone justify them, and upon which my attachment to them is

founded. I know that in spite of the warning here given this will be the case. Yet some man of probity may be deterred by this warning from a disingenuity so prejudicial to the cause of truth.²⁴

Sometimes he despaired of even that small hope: 'This [is] no age for reformation. . . . I have sown the seed: the harvest is for another age.'²⁵

No matter how often Bentham repeated these facts of life, how coldly and clearly he understood them, how determined he was to accept them, he was still badly hurt. In his analysis the will and the understanding shaded insensibly together. In his own emotional responses, however, the separation between them was painfully sharp and he suffered. His continual apologies, rationales, lists of obstacles and defences are themselves significant. He was trying in vain to build a shell of self-protection. He needed one urgently, for he had been trained for success and had no defences against failure. 'After a boyhood passed in a manner to excite intense ambition,' he often later complained, 'an untoward parentage had plunged and kept me in the depth of humiliation.'²⁶ This was ungenerous. Old Jeremiah Bentham's pride and 'pushing' were more touching than blameable. Had Bentham followed his father's direction, he might have become another Lord Erskine, but in fact he deliberately renounced it and chose to go his own way. It is true, he was only twenty-one when he made his choice, too naïve to know how grandiose his ambitions were and too inexperienced to appreciate the barriers he faced. Only one failure after another could teach him. Yet he never once regretted his decision.

He learned, however. Gradually as his radius of experience widened he began to understand how little could be done within the tight circle of the English Establishment, either in his own province of the courts or in the administration, as he saw from the frustrations of his younger brother Sam. Bentham's history between 1768 and 1781 has therefore two chapters, an early age of enthusiasm to 1777 and a later age of disillusionment to 1781. In the first, the law was his whole world; and he quietly wrote codes and waited for a patron among the judges. He gambled on winning them over with *A Fragment* and lost. In the second, as his hopes shrank, his world of experience expanded from the courts to Parliament and the administration, from his own problems to young Sam's, from England to the entire world, from *A Fragment*

to *The Principles*. He sought to do as well as know in ever-expanding circles.

The Adventures of Sam.

'O my Sam, my child, the only child I shall ever have, my only friend, my second self, could you bear to part with me?' Bentham asked piteously in 1779 when Sam considered moving to the East Indies. 'If you were sure of succeeding there, and sure of not succeeding anywhere else, I would consent to tear myself in two. . . .'²⁷

Bentham's love for Sam was the most profound and intimate love of his life. He strove far harder for Sam's success and suffered far more deeply for his failures than for his own. During the 1770s their histories ran parallel and are inseparable. Sam as well as Jeremy had an inventive reforming genius, dedicated himself to public service, first sought a local patron and then, after many disappointments, began to look abroad. He too passed through an early age of enthusiasm and a later age of disillusionment. But Sam was in many ways very different from his older brother. Jeremy was small, weak, quiet and withdrawn – a natural recluse. Sam was tall, handsome, athletic, jovial and outgoing – a natural leader. He seemed made for success. Yet he too failed to break through the charmed circle of the English Establishment. Unable to find work at home, he left for Russia in 1779.

Bentham was heart-broken. With one breath his entire emotional life was snuffed out, for he had been far more than a brother to Sam. From the beginning, he had acted as a sympathetic intermediary between old Jeremiah and Sam. Nine years older, Bentham was already a confirmed Utilitarian when the young boy left Westminster School. Determined to spare him the dreary march through Queen's College and Lincoln's Inn, Bentham pleaded with his father to let Sam follow his natural practical and mechanical talents. Sam never could spell English properly. He spent every spare moment with the carpenter who rented the Bentham stable-yard. Old Jeremiah heeded Jeremy, and Sam was apprenticed to Mr Gray, the master shipwright at the government dockyards in Woolwich.

The boys conspired tactfully against their father. Age had mellowed him, but it had also made him more long-winded and pompously philistine. Jeremy understood him well and handled

him adroitly, but Sam was not so skilful. Poor Sam then became a victim of his brother's passion for reform. Bentham undertook to correct not only his spelling and punctuation, but his lack of filial finesse. In 1774 he admonished Sam:

'Therefore if there are any faults excuse.' Why do you write so? Anybody (I should be ashamed to shew your letter) anybody I was going to say would think I was your father or your Schoolmaster – But as much of that as you will to my father – I have told you so before, you neither speak nor write respectfully enough to him. You don't say 'Sir' often enough – I saw your last letter. You called him bluntly a Lawyer – You should have said 'of the profession of the law' or somewhat of that sort.

Put all this into the fire – Dead men tell no tales.²⁸

Bentham was right. Anybody would have thought he was Sam's father and schoolmaster both. Nothing Sam did escaped his doting but critical inspection and judgment. Bentham was relentless.

Before I cease to love you, my Sam, I must have ceased to love any thing that exists, beginning with myself. But my affection for you, were it possible to be ten times stronger than it is, could not prevent me from passing . . . such judgment on your conduct as the data I have before me . . . appear to call for.²⁹

Bentham guided, taught, encouraged, nagged, and mothered Sam. He saw to it that his laundry was clean, his buttons sewn on, and his tailor correctly fashionable. When Sam came on leave to London, Jeremy cooked dinner for him at Lincoln's Inn. He suggested reading lists, essay questions, and subjects for books. He even tried a few lame man-to-man talks. In conquering women, he advised, fear and hesitation are disastrous; always attack boldly; they can only say no.

In this intense devotion, Bentham was once again his father's son. As Jeremiah had 'pushed' him, so he now 'pushed' Sam, to win the success he himself had either failed to win or deliberately renounced. Though Bentham scorned the ordinary objects of ambition for his own sake, he worked doubly hard to get them for Sam. He wanted him to know the right people, say the suave thing, enjoy the pleasures and prerogatives of money,

be applauded and respected. He blandly sought favours for the boy that he would have been mortified to seek for himself.

Nor was their relationship entirely one-sided. Obviously Sam filled an enormous emotional vacuum. He also helped Bentham with his analyses. In the same long letter to Forster in 1778, Bentham told Sam's story as well as his own, describing the boy's talents and shortcomings, and frankly pleading for patronage.

For one of his years, [Sam has] . . . laid in a tolerable stock of knowledge; he has a pretty good person, a sound judgment, an excellent temper, and an inventive genius. His discourse however is on most occasions more hesitating and embarrassed than perhaps any man's ever was who was so well endowed in other respects. . . . He is by reflection not ill-read in the science of Human Nature. I find very few so capable . . . of assisting me in my metaphysical and political disquisitions. Several of the articles in the Table of Circumstances affecting Sensibility [see *The Principles of Morals*] . . . [were suggested by him]. If by . . . any . . . honest means he can get employment in his own country, so much the better. If not he will be glad to get it in any country that were friendly to his own: in Russia in the first place because she is our best friend to England, and because merit, as far at least as depends upon the Empress is sure to be encouraged. If this notion be a mistaken one, the blame is in great measure yours for having taught me to entertain it.³⁰

In 1778 Sam was twenty-one and had finished his apprenticeship. Yet Bentham already despaired of the boy's future in England. Was his gloomy prediction based on his own failures or did Sam's own short history offer good and sufficient evidence? Unfortunately, it did.

Sam was first defeated by the Establishment in 1773, when he was only sixteen. British naval administration in the eighteenth century was a Circumlocution Office, divided between the Board of Admiralty, ostensibly responsible for general policy, tactics, strategy, number and design of ships, and war-preparedness; and the Navy Board, responsible for details, recruiting, promotions, food supply and uniforms. There were also separate boards of commissioners for each of the royal dockyards and a separate pay office.³¹ As in Parliament the art of general legislation was not understood, so in the Navy the art of central administration by professional civil servants was unknown. Staffed largely by bumbling indolent amateurs according to the

gospel of the spoils system in which public office was private property, the Navy Department was an anarchic hive of corruption and nepotism. How, then, did it manage to carry on?

Before Sam found out and reported his painful experiences, Bentham had never thought about it. His one world was the legal world. In the conventional but false eighteenth-century division between the judicial, legislative, and executive branches of government, he knew only the judicial. And so Sam the docile pupil became Sam the teacher, and Bentham the officious pedagogue became Bentham the student of administration.

Everyone liked Sam. Jolly, eager, bubbling with bright ideas, he became Mr Gray's favourite at once. Sam bounded over the ships at Woolwich from topmast to hold, studying every detail of their construction, questioning the old hands, and bursting with suggestions for improvements. Gray encouraged him to offer his innovations to the Navy Board, and in 1773 he submitted a design for a bilge pump. The members of the Board agreed that they had never seen anything more efficient. Sam was overjoyed. In his sixteen-year-old innocence he believed that an argument from merit must be conclusive. It turned out to be irrelevant. His pump was rejected.

When he tried to find out why, he was dismissed with absurdities. The members of the Navy Board, he explained to Jeremy, were afraid that:

Captains of men of warr [sic] would like it so well that they would not go to see [sic] unless they had my pumps on board, and that that would occasion trouble and expence therefore they would have nothing to do with it. I replied that of all the answers I ever heard none was so foo – bad as that.³²

Eventually the brothers discovered the true reason, an event as meaningful for Bentham as for Sam. It was a typical case of party politics and nepotism. When Sam submitted his sketches, the Navy Board was then testing a pump designed by Captain George Bentinck of the Duke of Portland's family. Sam's pump was clearly superior. The members of the Navy Board thanked him, admitted his improvements, commended his ingenuity, but declined on the false ground that they already had a contract for pumps.³³ Pressed further, they implied that the Captain's pump was superior. But at last the Surveyor of the Board confessed, so Bentham told Forster, that:

it was no such thing. That [the Board] . . . looked upon [Sam's] . . . as the best, and they had already had a great deal of trouble about pumps, but if it were adopted, the Captain's [mind] would not be easy . . . which would cause more trouble still.³⁴

At first, however, Bentham accepted Sam's failure calmly. He was still in an age of enthusiasm and still an individualist. In 1773 he considered Sam's misfortune a special case, the error of a few identifiable selfish ignoramuses, and not an instance of general misrule as he would have judged it ten years later. He blamed the weakness of government on the weakness of individuals, and especially on their laziness and ignorance. Surely as far as it went Bentham's early judgment was true. Stupidity and indolence were widespread. As we have seen, some of the stupidity was unavoidable because fact-finding machinery was unavailable. Much of it was avoidable, but followed from the eighteenth-century doctrine of public office as private property. When most members of the House of Commons were operating examples of *laissez-faire* individualism, intent on securing a place or a sinecure; when political bribery was so openly accepted that there was little need for secret service money; when there were no other examinations for public office than wealth and family connection; it was unlikely that many of those who held office were qualified for it.³⁵

Under Lord North's administration from 1767 to 1782 government dawdled on, slipshod and indecisive. Ministers and M.P.s drifted into the House late at night, drowsy with wine after a heavy supper. During the furious first night debate after the notorious Fox-North coalition was formed in 1783, Lord North snoozed in the gallery throughout the session though storms of abuse rained down upon him. It could be dangerous to trust him with important state papers. Once, after a long search for missing secret documents, his aides found them scattered about in his bathroom.

Lord Chancellor Thurlow was a man after Lord North's heart. When the table was cleared after state dinners and serious talk began, he sometimes lined up a row of chairs, stretched out on them, and fell asleep. One drunken visit of Pitt and Dundas to the floor of the House was celebrated in a couplet:

I cannot see the Speaker, Pitt; can you?
Not the Speaker, Dundas? I see two!³⁶

Drinking aside, Pitt's administration was businesslike, but as late as 1809 his brother, the Earl of Chatham, carried on the slothful tradition. Though director of the disastrous Walcheren expedition, no military crisis was urgent enough to rouse the Earl from his bed before noon, even in his tent on the battlefield.

Through Sam, Bentham learned many of these facts of eighteenth-century political life and tried to make the best of them. The wisest course for an ignorant amateur in office is to stand still: the less he does, the less chaos he creates. Certainly laziness and ignorance went hand-in-hand in most departments of government, including the Navy. Bentham had been shocked to learn from Sam how primitive the art of shipbuilding was. There were no acknowledged general rules of procedure, no professional naval architects to supervise the overall shipbuilding programme, no manuals of principles and instruction. Ships were built through trial and error by specialist craftsmen, each responsible only for his particular job. The whole haphazard and anarchic process badly needed system and intelligent supervision. These are what Sam set out to give it. He wanted to do for shipbuilding what Jeremy did for the law: to create a complete rationale, a new art-and-science; to be both Expositor and Censor, critic and inventor. During his apprenticeship with Mr Gray, Sam spent his time, Bentham told Forster:

in going all over the ships, taking minutes, and putting questions to everybody that would answer him: at other times in studying the rationale of the art in books together with the sciences on which it depends. This is against all rule. Consequently nothing is so rare as to hear of any improvement made in Ship-building by English Ship-builders in the King's service. Those that have been adopted have been made either by volunteers from other professions or by Frenchmen. We take their ships and then copy them.³⁷

Bentham responded characteristically. He put his inventive genius to work at once and planned reforms. Drawing upon the example of his favourite institutions, the private societies, he proposed a Board of Shipbuilding. This new agency, attached to the Navy Board, would be a bureau of invention to welcome, guide, and reward new ideas. It would meet regularly and often. Members of the Navy Board would be required to attend, and the sessions would be open and public. Bentham suggested, 'Let notice be given for anyone who thinks proper to give in lists of

experiments to be tried: proposing altogether as many as he can think of.'³⁸ As he quickly pointed out, this scheme was no crack-brained innovation. The Oeconomical Society of Haarlem successfully practised this prescription.

Though Bentham could not resist his passion for inventions and projects, he knew his Board of Shipbuilding would come to nothing. He prepared as usual, however, for the inevitable opposition and drew up a list of objections and answers. This list is important because it was his first excursion into political theory. Here he first introduced the doctrine that later became a fundamental principle of his theory of democracy: good government depends on the identity of duty and self-interest. He admitted:

The expense of such an institution would be certain and the benefit problematical. It would be liable to abuses: for what institution is not liable to abuse? . . .

The common-place objection against any new establishment that may be attended with expense, is that it may be made a Job of. This is a very good reason for suggesting expedients to prevent the abuse . . . but none at all for discarding it.

What is it that a man means when he says that such or such an establishment will be made a Job of? It is that the persons on whom the trust in question is reposed, will reap the profits that are annexed to it, without doing the duty. And will they? Certainly there will always be a danger of it if proper methods are not taken to make their interest quadrate with their duty. Is this point of policy neglected? The fault lies not in the project itself, but in the means employ'd for carrying it into execution. . . . Wherever power is given without proper guards it might be abused. But was this ever urged as a reason why no power should be given? That would be neither more nor less than to contend that there ought to be no such thing as government.³⁹

Bentham worried about the deficiencies of the Navy Department for Sam's sake. The boy was a new phenomenon in English public life – a scientifically trained naval engineer, architect, and inventor. What was to be done with him? How could he find a place in the near-moribund and spoils-ridden Navy Department? Bentham advised Sam to do as he himself sought to do: to publish and to find a patron.

Before 1778 Sam's success had seemed sure and easy. Though still a boy, he already had a patron. The celebrated Admiral

Howe,* delighted with his ingenuity and diligence, had taken him under wing. But his protection was short-lived. Lord Howe was a gruff sea-going admiral, out of his element in the on-shore patronage manœuvres of the Navy Department. Dissatisfied with the Ministry he resigned his command in 1778, and then Sam was once again adrift.

The boy consulted Jeremy, and together they decided that he must describe his best inventions and publish them as *Essays on the Marine*. Nothing came of this project, probably because writing was so painful for him. Then Bentham heard of a vacancy in the dockyards and for the first time in his life 'pushed' to get it. With neither experience nor influence he failed of course. He described the fiasco to Forster.

T'other day upon the apprehension of a war an additional Surveyor was appointed. This made vacancies in some of the inferior places in the Dock yard. I thought this a good opportunity of trying whether something could be done for [Sam]. . . . My father had no means of coming at anybody. I knew none of the Lords of the Admiralty Board myself; but I got friends to speak to three of [them] . . . in his favour. The answer of all three was that the places in question are not in the department of the Admiralty but of the Navy Board.⁴⁰

But the Navy Board denied responsibility and sent him back again to the Admiralty. And so Bentham was shuttled back and forth until he learned the truth. Everyone was well pleased with Sam, but the new office was a political plum belonging to Lord Mulgrave, one of the Admiralty commissioners. 'What everybody is agreed about,' Bentham said, 'is that the place would have been within the Department of the Admiralty board if Sam had been a freeholder of Huntingdon [Lord Mulgrave's constituency].'⁴¹ At last Sam put the question directly to his old friend, the Surveyor of the Navy Board. Bentham continued:

He reminded him of former favours: spoke of Ld Mulgrave: mentioned shipwrights of whose instruction he had had the benefit and who would speak to his qualifications: offer'd his papers for inspection: offer'd himself for examination upon any points. . . . The Surveyor was civil to him as before: but told him in these very words,

* Richard, Earl Howe, 1726-1799, Commander-in-Chief, North American fleet, 1777; resigned, 1778; reinstated, 1782; First Lord of Admiralty, 1783-88.

that 'if he had the abilities of an Angel, they would be of no use to him.'⁴²

By 1778, therefore, Bentham was discouraged not only about his own future in England but also about Sam's. Though Sam was only twenty-one, his problem was the more urgent, for he had neither an independent income nor a hermit's temperament. There seemed to be no alternative for these two ardent Utilitarians: if they could be of no use at home, they must go abroad.

On Wider Seas Abroad.

Where should they go? All signs pointed to Russia. Under Catherine in the 1770s Russia was the same land of promise that she became again in the 1920s. For years Bentham had been hearing tales of the great opportunities for reformers there. He heard them distantly from Forster in St Petersburg and directly from F. X. Schwediaur in London. Though this young German seemed to know everybody and everything, he struggled as hard to pay bills as Bentham did. When he decided to emigrate to Russia in 1778 he persuaded Bentham and Sam to follow him and promised to prepare the ground by publicizing their codes and inventions. Bentham's letter to Forster was a plea for the same kind of advance publicity. Bentham wrote excitedly about the Russian scheme to Sam:

Does it not, my dear Sam, make thy heart full glad? I can tell the work upon *Code* with more pleasure, now that I do it under a moral certainty of its finding its way to my dear Kitty.⁴³

Meanwhile Lord Howe stood ready to do whatever he could for Sam, and volunteered to send him on an official inspection tour of Russian and northern European navies. Bentham was delighted and energetically took over the preparations, 'pushing' hard to find new patrons for Sam, collecting portfolios of introductory letters, selecting equipment and packing trunks. His own future as well as Sam's seemed to hang on the success of this journey. If Sam could spread the name of Bentham in Russia, make powerful friends, find important work to do, and establish himself there successfully and permanently, he might then send for Jeremy and they could continue their loving partnership.

In 1780 Sam left for Russia and his tour was a triumph. His portfolio of letters and his own good-natured enthusiasm opened doors everywhere. He was welcomed, fêted, dined, honoured, and celebrated as he had never been at home. In St Petersburg he became the protégé of James Harris, the British Ambassador. Indeed, Sam's tour threatened to become too successful. Dazzled by his Russian reception, he forgot the gloomy facts of political life in England and naïvely assumed that he could duplicate his new glories there. His excited reports home were full of happy gossip and renewed plans for an English career. This was not what Bentham intended and he answered coldly, playing the substitute-father role with annoying conviction.

But the most disheartening of all to me was the idea you threw out of claims and expectations you would have were you to return. Now this was a matter that I could judge of . . . as well as you. Now, not being able to see the least reason for supposing that so long as Ld S. [Lord Sandwich, First Lord of the Admiralty, and so dedicated a practitioner of the spoils system, he was almost a caricature] continued at the head of affairs, how you could possibly have a chance worth a straw for a single penny, it perfectly astonished me to see you building up on any such hopes. Finding then your judgment so unsound upon this article, what degree of confidence can I place in it on others? . . .

Before I have done with you, I must scold you for your exaggerated expressions about I know not what inestimable and inconceivable advantages you have been deriving from . . . the society you have been in. With regard to present pleasure, *à la bonne heure*: I give you credit for it: I enjoy it along with you: and it can be no news to you, that you can not taste a single particle of pleasure which I can know of and not share. This indeed is but stuff and QSP-ism [the boys' shorthand for their father, who lived at Queen Square Place, Westminster] as between you and me: but I can not help saying as much now it comes across me.

Well then, but as to future benefit. I have seen it averred by very grave authors, and I am inclined to be of the same opinion, that in order to live *well*, a man must *live*. Now I pray, in what shape have the aforesaid inestimable advantages contributed to that . . . requisite? And what will you be the better for seeing into other people's gizzards when you have nothing to put into your own? 'More QSP-ism' you will say, 'here is this brother of mine going out of his way and exaggerating my errors merely for the satisfaction of exhibiting this

witticism.' Be it so: but when you have laid aside the exaggeration, be so good as to give me credit for the dry and simple truth.⁴⁴

Though Bentham was no doubt right, his grim advice to Sam was not entirely disinterested. For two years he had been preparing for his own conquest of Russia and unless Sam stayed there to give him moral support he could not have mobilized the courage to go. His campaign plans were so well advanced that Sam's caprices could not be permitted to overrule them. What were these plans?

Bentham hoped to conquer Russia with a criminal code. As early as October 1777 he had seen an announcement of the Oeconomical Society of Bern, offering a prize for the best criminal code submitted before July 1779. Though he was delighted at this continental interest in law reform, he himself did not enter the contest until 1778, when he was inspired by Voltaire's small pamphlet 'Prix de la Justice et de l'Humanité',

written expressly upon the occasion of the premium and for the purpose of encouraging people to become candidates. . . . This I look upon as a fortunate incident: if anything can draw the attention of the public abroad, and in particular of the Empress to such a subject, it must be the last dying words of Voltaire. He speaks of the difficulties, *presque insurmountable* [sic], the *tâche pénible*, etc. This can not but inspire high notions of the difficulty as well as importance of such a task.⁴⁵

Bentham's plan of conquest called also for a German translation of the code. He was aware, of course, that to attract a wider audience abroad his codes must appear in French. But good French translators were few and expensive, and when Bentham made his own translations, they cost him more pains than the original English version. During the 1780s he often solved the problem by writing directly in French. When he met Etienne Dumont in 1788 his troubles were ended at last. No matter what Bentham sent him – unsorted boxes of MSS. or stray sheets, finished essays or scraps, French or English – the patient selfless Dumont turned them into smooth colloquial French.

But Catherine of Russia was German. There were, moreover, many half-starved Grub Street Germans in London, eager to earn a few pounds. In 1780, therefore, Bentham set German translators to work. This new project, like so many others, came

to nothing. One hungry German after another struggled to understand Bentham's analyses, and could not. Bentham even even tried Baron Münchhausen* but, he wrote to Sam:

No translation from Raspe. He is in jail for about £70 or £80 where I suppose he will lie. To tell you the truth I had pretty well ceased to wish it: for I found him very confused upon the subject, nor could I beat into his head, for example, the difference between what we shall do, and what we ought to do.⁴⁶

Despite these setbacks Bentham was optimistic about the future of Utilitarianism in Russia. Why? What hopeful assumptions did he make about Catherine and her style of government?

Like many eighteenth-century *philosophes*, the young Bentham admired 'enlightened despots'.

Temporum felicitas – Regis boni – Philip felicitated himself that his son Alexander was born in the age of Aristotle and I that I could write in the age of Catherine, of Joseph, of Frederic, of Gustavus, and of Leopold.⁴⁷

He respected their governments not only for 'benevolence' but for power and efficiency. When the sovereign speaks he is obeyed by all; when he commands reforms, they are carried out. It is far easier to persuade one man than a mass of semi-literate or illiterate subjects. Bentham therefore wrote for rulers and assumed their 'benevolent' belief in the greatest happiness principle.

Machiavel supposes his statesman a villain and then teaches him how he may fulfil his purpose. I suppose my statesman a patriot and a philanthropist or, what comes to the same thing, a man of understanding.⁴⁸

It is once again clear that forms of government were indifferent to Bentham. He addressed all 'men of understanding,' democrats as well as despots. He wrote for Catherine, but he also wrote for Benjamin Franklin. Strongly anti-American as

* Rudolph Raspe, 1737–1794, German professor of archaeology and curator of museum at Kassel; charged with stealing and selling medals, in 1775 he fled to England.

Bentham had been during the Revolution, he was as eager to legislate for the newly independent United States as he was for England or Russia. He proposed to send Franklin a copy of *The Principles of Morals* with this letter:

This book . . . was written for the use of leading men: nor to any but leading men has it been sent. As such, a copy of it has come to you. My notion of you is such that if there be any thing good in it, you will not fail [to make] . . . a good use of it. . . .

If any . . . of the ideas contained in it should be the means of adding to the prosperity of *your* country (since the unhappy distinction is now made) it will be some consolation for the misfortunes you have been a means of bringing upon *mine*.⁴⁹

Bentham's admiration of 'benevolent despotism' was one explanation of his early devotion to civil and penal rather than constitutional law. A despot as well as a democrat could reform civil and penal law; his power was not thereby threatened. Bentham foresaw two obstacles to the establishment of a perfect legal system, the selfish interests of the sovereign and the prejudices of the people. He concluded:

The first are no obstacles to the reformation of any branch but the constitutional. The second are no conclusive obstacles when the sovereign is in earnest: it is his fault if he does not prevail when he has the force of truth and power on his side.⁵⁰

Of all the 'enlightened despots,' Bentham admired Catherine most. Her views must prevail, he felt, because she had the force of truth as well as power on her side. Soon after she came to power in 1762 she issued 'Instructions' for a legislative Grand Commission to reform the Russian law. During that 'wonderful year' 1769, Bentham discovered these 'Instructions' as well as Beccaria and Helvétius, and they too inspired his dedication to law reform. As he explained to Forster in 1778, they 'gave me fresh incentives and afforded me further lights'.⁵¹ Why was Bentham so strongly impressed by them?

They were frank plagiarisms. Catherine borrowed freely from the *philosophes* and Bentham admired her prodigiously for it.

If sovereign power has ever appeared before me with dignity, it was in the Instructions published by Catherine II, for a code of laws. . . .

Superior to the vanity of composing this work herself, she borrowed the best . . . in the writings of the wise men of the age: but by adding the weight of her authority, she lent to these writers more than she borrowed.⁵²

Over and over again he praised that phenomenal autocrat who 'in a feminine body . . . had a masculine mind'.⁵³ Like Voltaire, Bentham was ready to worship her. 'We are lay missionaries who preach the religion of Saint Catherine,' Voltaire wrote to her on 1 November 1773.⁵⁴ Bentham said:

False greatness can not stoop to adopt anything that has appeared in print. . . . [Compare this] with true and undisputed greatness – instance – Catherine adopting whole pages of [Montesquieu and] Beccaria.⁵⁵

What, then, did Catherine's Grand Commission accomplish? Very little. Convened in 1767, it met over two hundred times and exhausted itself in endless aimless talk. Bentham was not dismayed by its inaction.

In Russia disquisitions on legislation are not only permitted but encouraged. Deputies from every province of that immense empire have been convened for the purpose of occupying themselves with that important subject, and, if no specific effect has yet resulted from that magnanimous measure, it has been because national intelligence is as yet but young, not because the sovereign was not willing. . . . In Russia as much pains have been taken to make men think as in some governments to prevent them to think.⁵⁶

Bentham's optimism was misplaced. He had chided Sam for long-distance delusions about a successful career in England. Now Sam chided him for the same fanciful delusions about the prospects of reform in Russia. Sam suspected that Jeremy would find court life an intolerable mixture of barbarism and ostentation. In January 1781 he tried to discourage him from coming to Russia, but Bentham would not be discouraged and answered:

What you said about my not liking St. Petersburg was I hope . . . not sincere. If [Catherine] . . . will give me . . . business to do, I don't see how it is possible I should not like it. I could bring more of my ideas to bear there in a month than here in my whole life. Those are the only terms, my Sam, upon which we shall ever meet there.

Don't think I can bear to go about to foreign courts, dragging about an obscure and insignificant existence.⁵⁷

Yet Bentham did not go to Russia until 1785 and then he went solely to visit his brother.* Sam had himself soon tired of court life and escaped from it. He became estate manager for Prince Potemkin, a fabulously wealthy eccentric favourite of Catherine's. This commission seemed providential. Prince Potemkin wanted to transform his estate at Kritchev on the Don from a feudal peasant backwater to a self-contained show-place of advanced experimental agriculture and industrial technology. He gave Sam complete freedom and, though the Prince's plans were quixotic, the young engineer-architect at last had an open field for the exercise of his inventive genius.

Though Kritchev was deep inland, it was Potemkin's whim that a shipyard should be the central industry of the little self-sufficient community. Sam was ordered to set up separate industries for everything he needed – a lumber mill, glass-blowing plant, tannery, a cordage factory, as well as a dairy, bakery, school, and hospital. All this he struggled to do, under primitive, anarchic, sometimes farcical conditions, with unskilled and undisciplined workmen. It was exhausting frustrating work and in 1784 he pleaded with Jeremy for help.

Now then, how happy I should be to have you with me. How many things we might dress up together that would make a figure, and the making a figure seems all that is sought after here. Useful things are certainly adopted sometimes, when they could not be splendid without being useful.

I for my part can neither fix upon anything nor execute it to my satisfaction where it is a literary production. . . . I have now got comfortable lodgings where you would not be exposed to shiver with cold and blister your legs. . . .

The general purposes of your coming would be. The cooking up my most striking projects in a way to make a figure. . . . The consulting on means of turning my ideas of improvement in the Marine at home to some account so as to be preparing the way before me there. The reading over your works together . . . to make them palatable to this country. The drawing up of 2 or 3 philosophical papers which would be of use both at home and here.⁵⁸

* For detailed and amusing accounts of Bentham's journey, see Everett *The Education, op. cit.*, pp. 156ff., and X, pp. 149ff.

At last, moved by Sam's appeal, Bentham went. Why had he waited so long? What had happened to his plans for a Utilitarian conquest of Russia? He delayed, as he had delayed so often before, not because he was lazy or bored, but because he was over-zealous. Though he meant to invade Russia armed with a complete Bern Prize criminal code, he never finished it. One piece of analysis suggested another, and that a third and a fourth, until he was surrounded by masses of incomplete minutiae. A penal code needed a preface, an analysis of offences; and an analysis presupposed an announcement of the general principles of morals and legislation. Where is the dividing line between penal and civil law? Between direct and indirect legislation? What are the limits of jurisprudence? Has indirect legislation any limits? Thus Bentham wrote on and on, from the Bern code, *The Principles of Morals*, and *The Limits of Jurisprudence Defined*, to the still unpublished masses of MSS. on indirect legislation. The years passed – 1780, 1781, 1782 – and still he was not satisfied that he had covered the whole ground. Inevitably he sacrificed doing to knowing, and neglected his Russian schemes. They lingered, however, in the background. When Bentham went to Russia in 1785, he still expected that Catherine would be his most appreciative audience.

Nevertheless, when the opportunity for their meeting came, Bentham shunned it. Catherine came to inspect Sam's enterprises at Prince Potemkin's estate when Bentham was there, but his shyness and diffidence overran his pride, and he hid away in a remote cottage. Furthermore, Bentham had seen for himself what Sam had told him years before, that Russia was a land of violent contrasts between civilization and barbarity. One of Prince Potemkin's eyes had been gouged out in a court brawl. When Catherine set up a French theatre, she fined her nobles for non-attendance. Bentham now suspected that many of her reforms were hollow shams. 'Mon petit ménage,' she called her empire. Gunning, the English chargé d'affaires, insisted that only an insatiable lust for fame could explain her 'undertaking so many immense works of public utility, such as the foundations of colleges . . . at an enormous outlay, and then . . . not even finishing the buildings for them.'⁵⁹

The Kritchev experiment was doomed to fail from the beginning: Sam could not find responsible subordinates. The dairymen and wheelwrights he was forced to import from

Europe were often disobedient, lazy, quarrelsome, drunken, or lecherous. As early as 1784 Sam was exhausted and chagrined, and ready once again to try 'to make a figure'⁶⁰ in England.

For his part Bentham had done as Sam asked, and had immediately gone to work turning 'ideas of improvement . . . to some account'.⁶¹ One of Sam's inventions, the Panopticon, enchanted him. This was a building designed like a wheel, with management offices at the central hub and corridors radiating from it like spokes. To Bentham this architectural plan seemed endlessly adaptable—to factories, schools, poor-houses, and above all to prisons. It seemed the perfect Utilitarian building, where theory could be applied and knowing translated into doing. He borrowed Sam's plans and made them his own. As he had once dreamed of conquering Russia with a criminal code, he now planned to conquer England with Panopticons.

Nothing came of Bentham's schemes for a Utilitarian invasion of Russia because he neither finished his penal code nor could he find a good German translator; and when he did visit Sam, he became disillusioned with Catherine, kept to himself, and wrote *Defence of Usury* and *Panopticon*. But there was another reason, one that underlay and strengthened all the others. He had long since found a patron at home, the great Lord Shelburne, who showed him new worlds he had never known. Bentham was no longer so eager to explore wider seas abroad because he had been happy and busy exploring at home. What new worlds did Lord Shelburne open and how did Bentham survey them?

CHAPTER 7

1 X, 115. 2 X, 80.

3 A. M. 33540, 86, 12 July 1784.

4 A. M. 33537, 317, 6 October.

5 *Ibid.*, p. 319.

6 II, 573–83.

7 Stark, I, 283ff., II, 585–98.

8 X, 356–8. 9 II, 299ff.

- 10 B. 169, 104.
- 11 *Ibid.*
- 12 IV, 3-35.
- 13 B. 87, 116.
- 14 X, 565.
- 15 *Ibid.*
- 16 B. 132, 419.
- 17 *Op. cit.*
- 18 *Ibid.*
- 19 *Ibid.*
- 20 *Ibid.*
- 21 B. 169, 119, no date, 1781. Probably not sent.
- 22 B. 169, 7.
- 23 B. 27, 119, 1779.
- 24 *Ibid.*, 8, Preface, *Critical Elements of Jurisprudence*.
- 25 *Ibid.*, 85.
- 26 A. M. 33553, 12 January 1828, 'History of the Intercourse of Jeremy Bentham with the Lansdowne family, addressed by himself to the present Marquess of Lansdowne'.
- 27 A. M. 33538, 285-6, 22 January 1779.
- 28 A. M. 33537, 285, 25 April.
- 29 A. M. 33539, 104.
- 30 *Op. cit.*
- 31 See Basil Williams, *The Whig Supremacy* (Oxford: Oxford University Press, 1952), pp. 212-13.
- 32 A. M. 33537, 250, 1773.
- 33 The whole story is told in M. S. Bentham, *The Life of Brigadier Sir Samuel Bentham* (London: Longman, Green, Longman, & Roberts, 1862).
- 34 *Op. cit.*, pp. 104 ff.
- 35 See Namier, *The Structure of Politics*, *op. cit.*
- 36 *Holmes-Laski Letters*, *op. cit.*, I, 138.
- 37 *Op. cit.*
- 38 B. 169, 6, no date, 1770s.
- 39 *Ibid.*, p. 7.
- 40 *Op. cit.*
- 41 *Ibid.*
- 42 *Ibid.*
- 43 A. M. 33538, 252, 31 October 1778.
- 44 A. M. 33539, 69-70, 6 August 1780.

- 45 A. M. 33538, 219-20, August 1778, to Sam.
46 A. M. 33539, 75, 10 April 1780.
47 B. 27, 152.
48 *Ibid.*, 141.
49 B. 169, 118, *ca.* 1781, unsent.
50 B. 27, 161.
51 *Op. cit.*
52 *The Theory of Legislation, op. cit.*, p. 445. See also I, 568-9.
53 X, 162.
54 John Morley, *Diderot and the Encyclopedists* (London: Macmillan and Co., 1914), II, pp. 88ff.
55 B. 27, 111, 1770s.
56 Halévy, *La Jeunesse, op. cit.*, 365.
57 A. M. 33539, 123.
58 A. M. 33539, 433, probably January 1784.
59 Morley, *op. cit.*, 93-4.
60 A. M. 33539, 433.
61 *Ibid.*

A Mentor Found

Lord Shelburne and the World of Politics

1781-1789

'The applause of a single human being is of great consequence.'

DR JOHNSON

Mentor and Telemachus.

One summer morning in 1781 Lord Shelburne* called on Bentham at Lincoln's Inn. Almost fifty years later this moment was still vivid.

A knock brought me to my outward door. On opening it presented to me an unknown face. A look of ignorance asked who wore it? The answer was Lord Shelburne. I felt as men used to feel when Angels used to visit them. . . . Those days . . . were the happiest of my life.¹

Bentham saw a tall bulky man whose coarse pock-marked face was softened by an amiable smile. Inheritor of the Chatham rump of the Whigs, Shelburne was one of the most powerful men in England. He was also one of the wealthiest, a magnificent patron of progressive movements, lavish collector of books, sculpture, paintings, animals, plants and people; friend and supporter of Dr Price, Priestley, Garrick, Benjamin Franklin, the Abbé Morellet and Talleyrand. He had come to add Bentham to his collection.

Shelburne came providentially to Bentham's dark and damp rooms. When Sam left for Russia in 1780 Bentham despaired. For years he had been everything to the boy – brother, confessor, mother, father, tutor, judge, spokesman. Now he was alone again, with few roles left to play. He still busied himself with

* Sir William Petty, 1737-1805; second Earl of Shelburne; first Marquis of Lansdowne.



National Portrait Gallery, London.

Sir Francis Bacon, Viscount St Alban. Studio of P. Van Somer.



National Portrait Gallery, London.

William Petty, Earl of Shelburne. After Sir Joshua Reynolds.

Sam's affairs, ordering, packing, and sending books and clothes; copying parts of his letters and mailing them to friends and possible patrons. But there was an emotional gap in Bentham's life and Lord Shelburne filled it up. Bentham loved him and his family as he never loved anyone but Sam.

After Sam went, Bentham once again sank into hypochondria. Lonely and isolated, he brooded over his failures. Then Lord Shelburne called and gave him back his self-respect. 'He raised me from the bottomless pit of humiliation,' Bentham later exclaimed, 'he made me feel I was something.'² Though Bentham had long before abandoned hope of an English audience, this meeting revived it. Now many of his disappointments began to seem trivial and his future bright with new expectations.

It was the proudest moment of his life. Nor did it shrink in grandeur as the years went by. Indeed, the facts finally swelled beyond recognition. He loved to recall how Lord Shelburne had made the first overtures, had sought him out in his obscurity, full of praise for *A Fragment on Government*. The true story was different.

In a shadowy and hesitant way, Bentham had been 'pushing' to meet Lord Shelburne since 1779. His friend F. X. Schwediaur had dined several times at Shelburne's magnificent Adams brothers' palace in Berkeley Square. Perhaps he could introduce the subject of Utilitarian law reform over port and cigars? Schwediaur tried in vain. For Sam's sake Bentham 'pushed' harder and arranged an interview through Francis Maseres, one of the barons of the Exchequer Court. Shelburne was gracious and helpful to Sam, and supplied him generously with introductory letters to renowned Russians.

Grasping this straw of acquaintance, Bentham sent his would-be patron curious excerpts from Sam's letters. In July 1780 Shelburne first replied with thanks for Sam's remarks and an invitation to call any morning at Lansdowne House.* Though this response exactly followed Bentham's design, he replied stiffly:

Mr. Bentham presents his compliments to Lord Shelburne and hopes it will not be imputed to any want of respect or gratitude that he declines waiting on his Lordship for the present, being about to leave

* As Shelburne's palace was called after he was elevated to the Marquisate of Lansdowne in 1784.

London for the summer in the course of a few days, and in the meantime confined by very particular engagements. Mr. Bentham will be in town again the beginning of November and will then endeavour to avail himself of his Lordship's invitation.³

This was a transparent and pathetic manoeuvre, but Bentham was pleased with it and sent Sam all the details – a copy of Shelburne's letter, his own reply, and a justification.

As to the reasons of my declining: 1. I had a mind he should see *Introd. to Code* [i.e., to the Bern Prize Code, or rather its successor, *The Principles of Morals*, then being printed] before he saw me. 2. I did not want him to fancy that his acquaintance was a thing I was disposed to jump at. 3. My letters I was afraid had gone rather too far on the side of humility, and he had not taken an early enough notice of them. Upon the whole I thought we should meet upon a much better footing in November than now.⁴

But November came and went, and Bentham did not go to Lansdowne House. Strong as his passion for public recognition was, his pride and timidity were stronger. He wanted a patron, but he wanted no conventional patronage and he would not be patronized. At last, almost a year later, Lord Shelburne came to Bentham.

Who was this man? Why did this wealthy and powerful noble seek out an unknown scribbler? What did he want? It was some time before Bentham understood and then he could scarcely believe it.

After dining a few times in Berkeley Square and finding Lord Shelburne not only sympathetic but deferential, Bentham accepted his invitation to stay at Bowood, the magnificent family seat in Wiltshire. There he discovered a new world, a frenetic, luxurious, cosmopolitan, aristocratic paradise. Bowood was like a resort hotel in mid-season: carriages crowded the drive; squads of guests, children, servants and baggage were welcomed, unpacked, fed, winced, bedded, breakfasted, amused and packed off again. Riding parties, whist games, musicales, dinners, and *conversazioni* followed an endless round. In the afternoons Bentham pulled Shelburne's little boy around in a dog-cart or inspected ostriches in the menagerie. In the evenings he played Händel violin sonatas with the ladies or chess with William Pitt.⁵

But this glittering world was not Bentham's world, and

Shelburne knew it. An excellent host, he respected the cloistered routine of his new friend and arranged for it to continue undisturbed at Bowood. Bentham was given a suite in a remote quiet wing and excused from formal dinners and late drinking parties. As a special honour, he was invited by the charming shy ladies of the house for tea in their boudoirs; there Lord Shelburne sometimes joined them to read Bentham's Utilitarian manuscripts aloud.

By chance one evening the two men met alone in the candle-room, where Bentham was lighting his way to bed, and Shelburne his way to dinner. 'Mr Bentham,' Lord Shelburne asked, 'what is it you can do for me?' Bentham was surprised but answered quickly, 'Nothing at all, my Lord, nothing that I know of: I never said I could: I am like the prophet *Balaam*: the word that God putteth in my mouth – that alone can I ever speak.'⁶

Far from angering Shelburne, this was exactly what he wanted to hear. With money to buy almost anything, he rejoiced to find a man who could not be bought. What he hoped to get from Bentham was completely disinterested information and advice. Though out of office when he met Bentham in 1781, Shelburne was then as powerful as he was wealthy, and in 1782 became Prime Minister. Only forty-five, he had already held Cabinet office in 1763 at the age of twenty-six. Nevertheless he was in some ways a humble man.

He had been raised in Ireland outside the polished circle of English aristocracy, disliked and neglected by his widowed father, and haphazardly educated by ignorant private tutors. There he developed a powerful, independent, infinitely curious mind, well aware of its limits and gaps. He spared nothing to fill them up and became one of the best informed men in England. Interested in everything from architecture to zoology in the best Enlightenment tradition, he collected plants, animals, books and paintings, and economic, social and political facts as well, privately practising the collection of evidence for which Bentham so often pleaded. He employed three or four full-time clerks to copy state papers and surrounded himself with experts, always ready to be consulted. Two of his parliamentary seats were held by Isaac Barré* and John Dunning,† influential and tempestuous

* 1726–1802, colonel and professional politician.

† 1731–1783, Lord Ashburton, Solicitor-General 1768–70; famous in the history of the development of English democracy as author of the 1780

orators who were his eyes and ears in the House of Commons. 'Omniscient' Jackson* supplied legal and general information; Sir Francis Baring† and Dr Price‡ were his experts on economics and finance.⁷

Bentham, then, was added to the roster of consultants as an impartial instructor in morals and legislation. Dazzled by his splendour, it was hard for Bentham to see Shelburne's insecurity and humility. When he did at last, he gladly played the role assigned to him. He told Bowring fifty years later:

Lord Shelburne used frequently to say, 'Tell me what is right and proper – tell me what a man of virtue would do in this matter'. . . . He caught hold of the most imperfect scrap of an idea and filled it up in his own mind – sometimes correctly, sometimes erroneously. . . . He asked me what he could do for me – I told him, 'nothing'; and he found this so different to the universal spirit of those about him, as to endear me to him. . . . I was . . . of more importance to him, than I could bring myself to believe. I was cowed by past humiliation. – I felt like an outcast in the world.⁸

But what did Shelburne do for Bentham? He offered direct patronage and was rebuffed. Bentham ignored his attempts to find him a place in the East India Company. After Shelburne became Prime Minister in 1782, he offered Sam an Admiralty Board Commissionership. Sam refused because his Russian career was flourishing. Shelburne was never again in office after he was forced to resign in 1783, and never again free to distribute places.

However, he gave Bentham what he needed most, love and self-respect. And of great significance for the future of Utilitarianism, he led Bentham from the parochialisms of civil and penal law to wider new horizons, above all, to a study of constitutional law. How did he do this? Was he not the pupil and Bentham the teacher? Yes. In fact, the question suggests the

resolution 'that the influence of the Crown has increased, is increasing, and ought to be diminished'.

* Richard Jackson, d. 1787, M.P. for New Romney, 1768–84.

† 1740–1810, director of the East India Company; founder of the banking house, Baring Brothers.

‡ Richard Price, 1727–1791, author of Pitt's sinking fund; Bentham's anathema.

answer. Lord Shelburne did many fine things for Bentham, but the greatest of them was this: he asked the right questions.

Constitutional Law and Party Politics.

One evening at dinner in Lansdowne House Shelburne asked, why do you limit your studies to civil and penal law? What about constitutional law? Flustered, Bentham stammered a weak and unconvincing answer. He returned to Lincoln's Inn dissatisfied, and that same evening wrote Shelburne a fuller, though still breathless, explanation. The tone was wrong, and he knew better than to send it. All the same, it is a revealing and important document.

My Lord, In the last conversation I was honoured with [by] your Lordship, (no part of which will very speedily be forgotten by me) I well remember [your] . . . question . . . how it happened that I had not made the constitutional branch of the law the first object of my enquiry. If I have reaped any profit by a course of twelve years study it will show itself in my capacity of receiving instruction from such questions as your Lordship may be pleased to put to me [this sentence is transferred from a later section where it did not belong]. The question is one of those which seem to bestow instruction as they seem to ask for it: had it been my good fortune to have . . . possessed sooner the advantages of which a prospect is now opened to me, my book [i.e., *The Principles of Morals*, then just printed] would have been better than it is and sooner written than it has been. But let that pass – it becomes me rather to make the most of the advantage which my good fortune has thrown into my hands than to repine at the thought of its not having befallen me any sooner.

But to return to this question. Time did not then allow me to attempt giving an answer that could . . . be satisfactory. . . . All the response I gave was that the opposite course . . . was that which the order of my ideas had prescribed to me. The answer which . . . I could not then give for myself my book will be found I hope to have already given for me. The passage I allude to is in Ch. 16 . . . beginning with these words . . . 'The general end of government . . . is the happiness of the community: the happiness of the community is made up of the several happinesses . . . of the several individual members of which that body is composed – These happinesses are all reducible into such and such pains or evils averted – and such or such pleasures or advantages procured or secured. . . . [If this is so, then] the laws which belong to the constitutional branch are those which,

of all others (as I hope your Lordship will perceive) stand the furthest from that mark in the chain of causes and effects. . . .

I remember also to have confessed to your Lordship that the constitutional branch was that which above all others had hitherto occupied the smallest share of my attention. But that it either has or could have been unnoticed by me . . . will be sufficiently plain to any one who considers how inextricably all the several branches (into which the business of government may be divided) are interwoven. . . .

If in return for the rich harvest of instruction I shall be sure to reap it should be my good fortune to afford any . . . it [will] be one of the most honourable as well as the most flattering circumstances of my life.⁹

Bentham continued in another unsent letter:

Since I was at Shelburne-house [*i.e.*, Lansdowne House] the nature of my design has led me to bestow upon the constitutional branch of the law a more particular share of attention than before: which has certainly not been the less solicitous for a hint which fell from your Lordship on that subject. . . . My way is first to represent what is *possible*, next what is *eligible*, and lastly what is *established*. The first object I have got pretty well within my grasp, having drawn a circle . . . round the possible modifications which the powers of government admit of. . . . These are things which are not done in a day, my Lord: and yet in point of extent this has been but a parenthesis, as in point of difficulty it has been but an amusement in comparison of the other contents of a provoking chapter which still sticks with me: and of which the object is to analyse the texture of a complete body of laws *quelconque*.¹⁰

What Bentham found so troublesome was Chapter XVII of *The Principles of Morals* that eventually became *The Limits of Jurisprudence Defined*. But Lord Shelburne's question became ever more insistent and challenging. Gradually during the 1780s constitutional law changed from 'a parenthesis' and 'an amusement' to Bentham's central concern. He came to think that 'as in difficulty, so in importance, [the constitutional] . . . part of the business of law far surpasses every other.'¹¹ A profound chapter of his intellectual history is hidden in one small footnote of *The Principles of Morals*. In the printed version of 1780 Bentham divided law into two parts only, civil and penal.¹² When the book was at last published in 1789, he added this note:

And the constitutional branch, what is become of it? . . . An answer that might be given is – that the matter of it might without much violence be distributed under the two other heads. But, as far as recollection serves, that branch, notwithstanding its importance . . . had at that time scarcely presented itself to my view in the character of a distinct one: the thread of my enquiries had not yet reached it.¹³

Of course, as Bentham told Lord Shelburne, he had dealt with constitutional law before. But how had he considered it? Formally and analytically only, as a subordinate branch of civil law in the exhaustive logic of the will. His early definitions were shaped by the conventions of eighteenth-century parliamentary life where, as Namier has deplored, ‘politics were transacted, to a disastrous extent, in terms of jurisprudence.’¹⁴ Bentham spun out the consequences of Maitland’s maxim that British constitutional law is an appendix to the law of real property.

Constitutional power is property in trust. . . . In a certain respect the Constitutional Code is the private civil code over again . . . changing only the persons that are the subjects. The [sovereign] . . . being the *master in trust*, that is, the *guardian* of his subjects.¹⁵

The difference between them lies in the number of men for whom the trust is held. He prefaced his definition of constitutional law with a careful division of power.

Power is either over things or persons: and in either case it is either beneficial [over oneself] or fiduciary [over one or more other individuals]. When fiduciary it is coupled with trust. What concerns beneficial power, whether over things or over persons, and fiduciary where the benefitee is an individual, or an assemblage of individuals, belongs to the Private Law: what concerns fiduciary power where the benefitee is the whole community . . . belongs to the public or Constitutional branch.¹⁶

This uncompromisingly formal analysis was an element of Bentham’s arcane philosophy, made after he split his thought in two. Nevertheless, from the beginning his approach had been formal. As early as 1776 he had written, in what may well have been his first effort to define constitutional law:

Constitutional law is not made up so much of commands . . . portions of discourse . . . marking out what shall be deemed

offences, as of descriptions of those by whom commands shall be issued, and of the bases on which commands may and may not be issued by those persons.¹⁷

As usual, he was both censor and expositor, postponing his own definitions until he had bared the fallacies of current ones. Here, too, his early approach was formal. In an early unpublished manuscript, important because it led him from formal analysis to the edge of political fact and foreshadowed his later theory of democracy, Bentham questioned the conventional division of power. Sovereign power, men agreed, had three branches: legislative, executive, and judicial; and legislative power was supreme among them. Bentham doubted it. He thought that men were as vague and confused about kinds of power as they were about 'natural rights'.

It is said that supreme Legislative Power is superior to the supreme Executive. How is this to be understood? At the same time it is certain that every act of power . . . is performed not by the Legislative but by the Executive. How are these propositions to be reconciled?

What is legislative power? 'It is what Parliament exercises.' What is Executive power? 'It is what the King exercises.' What is judicial power? 'It is that share of Executive power which Judges exercise.' Hitherto we have seen no better than these answers to these questions.¹⁸

In fact, as we have seen, these powers overlapped. The King exercised the judicial power of pardon and the House of Lords was the supreme court. Instead of empty or ambiguous formulae, Bentham sought clarity and precision. In his early analysis, there are two, not three, kinds of sovereign power: executive and legislative. Neither is supreme. They are mutually dependent, helpless alone and unlimited together.

All that the Legislative Power as such can do is to mark out by competent denominations or descriptions, the objects of its disfavour, others of its favour: to fill up these classes by appointing the persons who are to compose them, belongs to [the] . . . Executive. . . . Take away either, and all efficacy is at the same time taken from the other. Take away Executive Power and the Legislative reaches not individuals. It composes classes of individuals, but those classes are

empty, for want of the Executive Power to fill them up. It declares that persons known by such and such marks shall be so and so dealt with, or be at liberty so and so to deal with others: but for want of the executive power to set those marks, there are no persons who have those marks upon them.

On the other hand take away the Legislative Power and the Executive does not so much as open its lips. It fills up no classes with individuals, for there are no classes to fill up.

The supreme power it is manifest can be constituted no otherwise than by the union of those two.¹⁹

Bentham then divided executive power into three branches: investitive, dispensatorial, and judicial. When he defined investitive power, he came to the heart of constitutional law.

The investitive power with respect to offices, when in the hands of one or a few is called the power of appointment: when in the hands of many, it is called the power or rather right of Election: the many are called Electors. In common speech, electors are said to be *represented* by the party or parties elected.²⁰

Constitutional law defines who shall command, who shall put people into classes, and the investitive power puts the whole machinery of command in motion. And in England electors decide who should fill up the class of legislators. For many years Bentham went no further in his analysis of sovereignty, but so far as it went, it became a standard part of his volitional logic, unaltered by time and experience.

But his formal analysis had no content. He had not yet asked, who shall fill up the class of electors? By whom and how shall they be represented? Even in 1781 Lord Shelburne's significant question about constitutional law did not immediately challenge him to much wider investigations. At first he went through the same finger exercises of analysis but this time with added virtuosity. Now that his philosophy had split into popular and arcane parts, his new definitions made no concessions. They were smothered in airless and uncouth neologisms.

In *The Limits of Jurisprudence*, Bentham divided all power and therefore all law into three classes: over the self, over individuals, and over groups; that is, contraction (impressive or autocheiristic), imperation *de singulis*, and imperation *de classibus*. These correspond roughly to beneficial, private (civil and penal),

and constitutional law. Again he insisted that legislative and executive power, that is, imperation *de classibus* and *de singulis*, stand or fall together.²¹

There was one new element. For the first time constitutional law became an independent class of power and not merely an appendage of civil law.

Soon after the French Revolution, Bentham took up his analyses of constitutional law for a third time, with a sense of urgency and purpose he had not known before. The age-old structure of French political power had collapsed. How should it be rebuilt? A question that naturally occurred to him was, how good a model was the English government? To answer it properly a rapid superficial survey was no longer enough. He had first to carry his analyses to their conclusions and then to support them with facts, a body of empirical evidence to give his abstractions substance. He needed a rationale. By 1790 he was finally ready with a complete science-and-art of constitutional law. When he applied it at last, he became a democrat.

But why had Bentham waited so long? Why after almost a quarter century of relative neglect did constitutional law then become and remain his supreme interest? He had explained his ostensible method to Lord Shelburne: first to present the possible, then the eligible, and finally the established. In fact, he went from the possible or analytic to the established or empirical; then he fitted the possible to the established, and arrived at the eligible. Before Shelburne's challenge, Bentham had not yet surveyed the possible; he had barely begun his analyses. But sketchy as they were, they already seemed to justify his indifference to constitutional law.

To begin with, the primordial elements of Utilitarianism are of course pleasures and pains, the sensuous responses of one man; and these are also the primordial elements of civil and penal law. It follows that civil and penal law, as Bentham told Shelburne, affect happiness more directly than constitutional, because they stand nearer in the chain of causes and effects in human behaviour. It should also be easier to make them truly scientific, because empirical generalizations can more safely be made about the relations between man and man than about those holding among communities of men. Theft and murder, for example, are crimes everywhere.

What was this rule of method but paraphrasis applied to law?

Though Bentham changed his mind about the importance of constitutional law, paraphrasis was always a fundamental and unalterable part of Utilitarian methodology. In 1802 he explained again:

That portion of the laws which most clearly bears the impression of the will of the legislator, ought to precede those portions in which his will is shown only indirectly.

For this reason, the penal code ought to precede the civil code, and the constitutional code. . . . In the first, the legislator exhibits himself to every individual; he permits, he commands, he prohibits; he traces for every one the rules of his conduct; he uses the language of a father and a master. In the other codes, he has less to do with commandments than with regulations and explanations, which do not so clearly address themselves to everybody. . . .²²

In the second place, Bentham's chosen audience of sovereigns and legislators was a small one. Had he questioned the sources of their power, he would have had no potential audience at all. He began with analyses of civil and penal law because every sovereign from tyrant to democrat could reform private law without endangering his authority.

Third, constitutional law was already an overworked field. Following Bacon's suggestion, Bentham wanted to bridge the gulf between philosophy and law. He wanted to become a statesman – but a statesman with a difference.

Not but that statesmen professional and occasional are in plenty: but their disquisitions are almost exclusively confined to the single branch of the law . . . called constitutional. . . .²³

Fourth, Bentham's neglect was a kind of negative approval of the British constitution. It seemed obvious to him as it did to most men, natives and foreigners alike, that British government was in fact better than any other. Why? Because her public or constitutional law was also better. Her private law, however, was in wretched shape, and therefore Bentham turned first to civil and penal law. Around 1779 he said:

England has long since been regarded with envy by the nations and not altogether without justice, as a pattern of prosperity and good

laws. Is it so? If it be, it is by the constitutional branch, not by any other; it is by what the people have extorted, not by what their rulers have conferred.²⁴

This praise could be dangerous. Men awarded it indiscriminately by an illegitimate association of ideas to every part of the legal system. It was true, Bentham acknowledged in 1782, that British constitutional law was 'the best beyond comparison that has hitherto made its appearance in the world; resting at no very great distance, perhaps, from the summit of perfection.'²⁵

However, he continued, the honour due to it was:

extended by an easy process of the imagination (or rather of the affections) [from one part] to the other 99. Examine it piece by piece, we should find it a vast bundle of inconsistencies. . . . But this incongruity does not show itself to the distant and admiring multitude, against whose censure its very immensity, which is one of its greatest blemishes, forms a most effectual defence.²⁶

Finally, Bentham the Expositor followed Bentham the Censor. His best ideas usually were responses to challenges, and during his early years his greatest challenge was Blackstone. Now constitutional law as such found no place in the *Commentaries*. As Laski has pointed out, 'It creeps in under the rights of persons, where he deals with the power of King and Parliament.'²⁷ Because Blackstone was more interested in civil law, so was Bentham.

Until challenged by Lord Shelburne, therefore, Bentham had good Utilitarian reasons for neglecting constitutional law. But once aroused, he now found better reasons for studying it. What were they? They were not new. He simply extended his early analyses from the individual to the community.

Under the principle of utility, the first subordinate end of government is security. But what is the gravest threat to national security? The government itself.

Security against evil, is either against evil from calamity, or against evil from hostility. . . . Internal adversaries, against whose evil agency security is requisite, are the *unofficial* and the *official* The *official* are those evil-doers whose means . . . are derived from the share they . . . possess in the . . . powers of government. Among these, those of the highest grade . . . are every where irresistible.

To provide, in favour of the rest of the community, security against evil [by the] . . . internal, and . . . irresistible adversaries, — is the appropriate business of the constitutional branch of law.

As in difficulty, so in importance, this part of the business of law far surpasses every other. . . . On the texture of the *constitutional* branch of law, will depend that of every other. . . . If, in [its] . . . framing . . . the greatest happiness of the greatest number is taken for the end in view . . . so will it be in the framing of those other branches: if not, not.²⁸

The difficulty and importance of constitutional law followed strictly from the calculus of pleasures and pains, for the magnitude of good or evil was measured not only by intensity, duration, etc., taken alone, but by *extent*, or the number of men affected. Now for the first time Bentham traced some of the implications of his calculus, and considered the social dimensions of morals. The result was an analysis of the orders of evil in the first, second and third degree, according to the time it lasts and the number of men suffering from it. Bentham acknowledged that every modern European government, no matter how despotic, successfully limited private civil and criminal offences to first- and second-order evils. But he saw, too, that the greatest third-order evils were political, and beyond the control of private law. For who rules the rulers?

[An] . . . observation may be extended to all offences which imply a breach of trust, an abuse of confidence, or a misuse of power, whether public or private. They cause less alarm in proportion as the situation of the delinquent is more peculiar, the number of persons in similar situations smaller, and the sphere of the offence more limited.

However, there is one *important exception*. If the delinquent is clothed with great powers; if he envelopes in his sphere of action a great number of persons; his situation, though peculiar, increases the circuit of alarm instead of diminishing it. . . . The alarm [he] . . . will excite, being proportioned to the extent of [his] . . . powers, may surpass that of the most atrocious robberies.²⁹

At this point, Bentham moved from the possible to the established, from analysis to description. The only way to measure third-order evil was to collect and weigh evidence of the use and abuse of political power. Here again Lord Shelburne's friendship was invaluable. Bentham had seen judicial power in action in the Court of King's Bench, and administrative power

in action at the Navy Board; now he saw legislative power in action at Lansdowne House and Bowood.

Lord Shelburne's career was a unique and instructive case history. Few men can have been as well qualified for the highest political office. He was brilliant, informed, affable, eloquent, ambitious, energetic, wealthy, generous and a military hero as well.* Few men can have begun more triumphantly. Though only twenty-four when he took his seat in the House of Lords in 1761, Lord Bute almost immediately offered him a Cabinet post. In 1763 he became William Pitt's first lieutenant and in 1766 his Secretary of State. When Pitt died in 1778 Shelburne inherited his leadership of the Chatham rump of the Whigs. Until Lord North's Government fell in 1782, Shelburne was out of office; then he became Home Secretary in Lord Rockingham's Cabinet. When Rockingham died later that year, Shelburne at last fulfilled his great ambition. He became First Lord of the Treasury and Prime Minister. But few men, having risen so high, can have fallen so fast and so finally. Shelburne had no sooner ceded independence to America and peace to France and Spain in 1783 than Lord North joined Charles James Fox in a coalition to unseat him. He never held office again. Deserted by all but a handful of stalwarts, he never again led a coherent faction, much less an effective opposition.

Few statesmen in British political history can have been so mistrusted and reviled. The King, the Whigs, and the Tories alike hated him. They condemned him as servile, aggressively ambitious, a gross flatterer, affected, hysterical, suspicious, a chronic liar, and totally unprincipled. When he became leader of the Rockingham Whigs in 1782, Fox resigned his Cabinet seat rather than serve under him. Shelburne was satirized in *The Letters of Junius* and *The Rolliad*; and caricatured as Malagrida, supposedly a particularly crafty Portuguese Jesuit, or Guy Fawkes about to blow up the House of Commons. To George III he was 'the Jesuit of Berkeley Square'. To Horace Walpole,

He was so well known that he could deceive only by speaking truth.
 . . . His smiles were so excited that, like the rattle of a snake, they
 warned before he had time to bite.³⁰

* He joined the Army in 1757, served under Lord Granby in Germany, and became aide-de-camp to George III.

Why did Shelburne fail so decisively? Why did so many men hate him so fervently? It remains a puzzle. Though there are a number of convincing reasons, none of them quite accounts for the ferocity. Nor can Shelburne's failure obscure his real greatness. Disraeli was one of the few to perceive it and celebrated him as 'one of the suppressed characters of English history . . . the ablest and most accomplished minister of the eighteenth century', a man of 'unrivalled knowledge and dexterity'.³¹

Bentham had of course sensed his greatness from the beginning. The very qualities and opinions that made Shelburne anathema to his political colleagues made him a hero to Bentham. Indeed Bentham shared most of them himself. Some he held before he met Shelburne; others he developed later. Because no one influenced him more profoundly, it is important to understand the nature and limits of this influence. It is a nice question, as easy to overstate as underestimate, and one that Bentham himself at first misjudged. He saw the differences and not the similarities. In a letter written on the way home from his first visit to Bowood in 1781, he explained:

I have parted very good friends with the people at Bowood, a thing I can not but wonder at, considering that it was politics that first brought us acquainted, at the same time that according to the discoveries we have reciprocally made nothing can be more opposite than we are . . . as to everything that concerns present measures – ³²

He was mistaken, for even at this early date his political opinions and those of Lord Shelburne very nearly coincided. Their similarity sprang from one central fact: they were mavericks in an age of herd politics. They were anti-party independents when independence was political suicide. This alone was enough to doom their careers, for in the tight circle of eighteenth-century parliamentary life, where parties differed rather in shifting monopolies of power and place than in ideology, there was no room for searching original minds.

Obviously they arrived at similar opinions from different directions: Shelburne, empirically, as a practising politician, a ruler; and Bentham, analytically, as one obscure critic among the ruled. Shelburne's lonely childhood in Ireland, his haphazard education, and lack of English 'connections' combined to isolate him politically. His superb talents and advantages were them-

selves handicaps: he seemed a threat to the established orders of power. Nor was he flexible. The system or The Thing, as Bright called it, demanded an apprenticeship that he refused to serve. Though aware of his bad education and lack of 'connections', he was still more aware of his great latent powers, aristocratic birth, and wealth; and contemptuous of the mediocrities who played at statesmen. To escape The Thing, he had joined the Chatham rump of the Whigs. Their motto, 'Measures not Men', attracted him as much as the forceful independence of their brilliant leader, William Pitt.

Bentham shared this contempt for parties. In a preface to his Bern Prize penal code, he scorned a possible audience of party men. Such a Utilitarian legislative treatise, he said,

never can suit the purposes of party men which are to confound the notions of right and wrong, and to cover the best measures of their opponents with the same infamy as the worst. It is in truth most hostile to them: since one part of the design of it was to warn and guard men against the delusion of these prejudices and vulgar errors, by force of which they seek to deceive others and perhaps themselves.³³

Party men, he continued:

may be assured it was not written for their use; it was written without any sentiment towards them nearer to hatred than disdain or nearer to complacency than pity.

It can tend only to humble them, since if it shows them any thing, they must see the sordidness or the littleness of their own pursuits.³⁴

Around 1780 he offered a radical proposal:

Methinks it were worth trying were it only as a new experiment whether the nation might not be served by its most capable members in a great and lasting way without a reference to party considerations.³⁵

So far as Bentham could discover, the difference between Whigs and Tories was merely one of Ins and Outs. Both parties were preserves of self-interest, organized to keep or gain prerogatives. He had been born and bred a Tory and in 1781 was a Tory still, not from conviction but from indifference or despair. Both parties were bad but the Whigs were worse, adding

fraud and hypocrisy to self-seeking. They supported John Wilkes, the American War of Independence, and parliamentary reform not from sincere liberal principle but only as strategic manoeuvres in their fight for place. In 1819 Bentham wrote 'A Short History of the Whigs from George I', a rambling and high-strung review.

At the beginning of the reign [of George III in 1760, the Whigs] . . . made the King as unpopular as they could: it was no fault of theirs if the Georges were not sent after the James's. Why? For what cause? because on his accession a number of them were turned out of their places. Arbitrary measures thereupon ensued . . . and thence just cause of resentment and opposition on the part of the people at large: but these were but incidents: the original cause was neither more nor less than the loss of these places. . . .

When the American colonies resisted taxation, the Whigs supported them in their resistance. Why? for love for those strangers? for regard for good government? No: but because they thus obtained that additional chance for forcing themselves into place, which at length ripened into certainty [*i.e.*, in 1782, when Lord North's Tory government was replaced by the Rockingham Whigs]. In Parliament the Colonists forsooth were not represented. . . . True: but who were or are? Not the people of England, not the people of Scotland, not the people of Ireland. . . .

The original unpopularity of the King, with the additional stock laid in by the American War not being yet sufficient, in 1780 or thereabouts, the Whigs betook themselves to Parliamentary Reform. Having dissipated his part of . . . unaccounted millions, starving for want of more of the public money, Charles Fox took a leading part. . . .³⁶

Though but crude polemics, this certainly reflects Bentham's life-long contempt for the Whigs. Yet Lord Shelburne was undeniably a Whig and Bentham undeniably revered him. How could he reconcile his hatred and his love?

There was really no conflict. Bentham objected to Whig motives not policies, and he never doubted the purity of Shelburne's intentions. Therefore many of Shelburne's actions that seemed disloyal, arbitrary and fraudulent to his political colleagues seemed wise and Utilitarian to Bentham. What, then, did Shelburne intend? What was his political vision?

Dissatisfied like Bentham with the entire Establishment, with

the courts, the Church, the monarchy, and Parliament, he also wanted to become a radical reformer. Bentham well understood Shelburne's dilemma: a Whig in name, he was, in fact, a radical democrat out of season. Nor was his democracy the whimsical, superficial, romantic affectation of some of the Rockingham Whigs who loftily appealed to ancient Athens, but one of fixed, informed and lonely principle. Bentham later said that Shelburne alone in his age was 'a Minister who did not fear the people.'³⁷ He continued:

What endears [his] . . . memory to me is, that, though ambitious of rising, he was desirous of rising by means of the people. He was really radically disposed; and he witnessed the French Revolution with sincere delight.³⁸

Bentham gratefully admitted,

Though not the existence, my attachment to the great cause of mankind received its first development, in the affections I found in that heart, and the company I found in that house.³⁹

To Shelburne, Parliament must reform or die. Either Parliament must rid itself of corruption and open its doors to new sources of wealth and power, or it would disappear as a viable social institution. In that complacent age, however, he was demanding the impossible. To most Englishmen, the system of places and pensions was not the death but the very life of Parliament.

Ultimately Shelburne hoped to become another Earl of Chatham, a man of destiny but in a pacifist reincarnation. As the great Pitt rose above party by magnetic personal force and led a united enthusiastic nation to victory in the Seven Years' War, so Shelburne hoped to lead a united, educated, independent people to victory over the domestic challenge of the early Industrial Revolution. He wanted, in fact, to become Bentham's new Moses, a Utilitarian statesman.

His dilemma was this, that in order to overcome the system he had first to become part of it; in order to become an independent leader he had first to be a willing dependent; and he could not do it. He was a general without an army, for parliamentary leadership presupposed a large and loyal party following. At an

impasse, he turned for support wherever he could find it. This led him down devious and desperate paths.

As a Whig, a supporter of Wilkes, the American cause, the Yorkshire movement for parliamentary reform, and Burke's Economy Bill, Shelburne was the King's enemy. But when the Whigs refused to line up behind him, he became the King's friend. By the rules of party politics, this was unpardonable treachery. But Bentham did not see it that way. To him, uncommitted by party ties, questions of party loyalties were not moral issues. With a charity that no one else granted, Bentham understood that Shelburne had no alternative. As Bentham himself began to write for foreign rulers when he found no audience at home, so Shelburne turned to George III when the Whigs failed him.

They shared an equivocal attitude towards monarchy. They disliked it, but when they began to consider the nature and effect of political power, it sometimes seemed the least evil form of government. It was often the most efficient. In an early outburst Bentham said:

A monarch is a sort of a creature that unites the properties of the Grand Lama and the Pope of Rome, not to mention an odd attribute or two that remains unclaimed by any other created being. Like the first of these, he is immortal: like the last infallible: as if this were not enough, he is omnipresent: no perfection that is imaginable is wanting to this god of our idolatry. . . . A wise King would turn with loathing from the incense: but a weak one might reward it.

Greedy of incense without caring to deserve it: fond of any principle of awe that could serve to screen his person against attack . . . content to draw on his office for a perpetual tribute of respect, without ever thinking of deserving it. Such is the condition of a King.⁴⁰

Shelburne echoed him in a bitter moment:

The fact is that all Courts and Princes have a dread of talents, and they consider ability and roguery as synonymous. . . . They never want for instruments . . . liars and libellers, calumniators and intriguers, are always within call to prevent anything like reform. This is what Kings call governing!⁴¹

All the same, Shelburne was prepared to reverse himself when his stay in office depended on it, and even to offer a theoretical

justification for a strong monarchy. As a better alternative to the aristocratic monopoly of power, he proposed an earlier version of Disraeli's 'Crown and Cottage' politics. When he became Prime Minister in 1783, he announced in his opening speech that he:

never would consent that the *King of England* should be a King of the Mahrattas . . . nothing more than a royal pageant, or puppet. These being his principles, it was, he said, natural for him to stand up for the prerogative of the Crown, and insist upon the King's right to appoint his own servants.*

So Bentham also insisted. In 1781 he was less interested in diminishing the powers of the Crown than in directing them to Utilitarian ends. He was also attracted to the 'Crown and Cottage' principle, and planned methods for popularizing monarchy. He sought to bring the King and his people together, and proposed a system of impressive public ceremonies for hearing petitions.

Since it is not always that . . . petitions . . . can all of them be read, and since [an arbitrary] . . . choice would render them of no use there remains but one way of determining the point of preference which is by lot: and this lottery should be as public as ceremonies and advertisements can make it. . . .

Let the Sovereign then have certain days . . . for receiving petitions from every hand that offers them: and let him receive them in the most public manner, in a spacious [sic] hall, in an elevated situation, sitting on a throne.⁴²

At the beginning of the nineteenth century Bentham began to develop an obsession with monarchy. He saw the royal hand everywhere, its greedy bloodstained fingers prying into every corner of English life. Though this was largely a neurotic aftermath of his Panopticon disappointments, there were facts behind his monotonous insistence. The Army and Navy were branches of administration, and during the Napoleonic Wars the Crown had a tremendous amount of extra patronage at its disposal. He also remembered Lord Shelburne's odd intimacy with George III and his anachronistic elevation of royal prerogative in an age when it was fast shrinking.

* Parliamentary speeches were then reported in the third person. Edmond Fitzmaurice, *Life of William, Earl of Shelburne* (London: Macmillan and Co., 1876), III, 238.

In still other ways, Bentham and Lord Shelburne were spiritual brothers long before they met. They were both good products of the Enlightenment, attacking all vested interests, roundly abusing lawyers and clergymen, welcoming social progress, and trusting to popular education as a specific for political ills.

But in 1781 there was still one great difference between them. Shelburne was a People's Man, an ardent radical; Bentham was an indifferent Tory.

By 1790 this difference had disappeared. Bentham had at last become a democrat and his enthusiasm now outran his noble friend's. Bentham now began to develop political ambitions; by this time Shelburne had abandoned his.

During his short tenure as Prime Minister from 1782 to 1783, he had no sooner negotiated peace with America than Lord North and Charles Fox joined to unseat him. Their perfidy was soon rewarded. In December 1783 they were in turn dismissed and replaced by the Earl of Chatham's brilliant son, the twenty-five year old William Pitt. In the general election of 1784 Pitt won an overwhelming majority, a popular triumph that Shelburne knew he could never match. Moreover, Pitt had been a Bowood regular like Bentham and sought to carry out many of the same liberal policies of free trade and parliamentary reform that Shelburne himself planned. A rival government was therefore no longer a possibility and Shelburne quietly retreated.

On the other hand, after a life of retirement, Bentham now rushed to the political front. When he returned from Russia in 1788 he was joyously welcomed at Bowood. In moods of nostalgic affection, Lord Shelburne regretted that he had done nothing for Bentham when he had held office. In 1790 one of his parliamentary seats became vacant, and Bentham mistook this regret as an offer to return him. He misread Shelburne's expression of sympathetic interest as a promise. Jeremy Bentham, M.P. — at first the idea seemed fantastic, but the more he considered it, the better he liked it. There was surely no better way to combine Knowing and Doing.

But Shelburne was committed elsewhere. Nor could he believe that Bentham wanted to become an M.P. He knew him, his pride, independence, and solitary routine too well to take him seriously. But Bentham now astounded him. When he learned that Shelburne had chosen another man, he exploded in furious

rage. In a sixty-one-page, ten-thousand-word letter, he accused Shelburne of bad faith, breaking promises, refusing to practise the principles or reform he preached, and patronizing ingrate mediocrities. This letter is extraordinary not only as a revelation of violent passions that Bentham usually kept hidden, but as a political confession. He was well aware of the usual condition of pocket-borough representation, that a nominee was more or less honour-bound to express his patron's opinions. In fact he advanced this condition as his own chief claim for preference. Convinced that he alone shared Shelburne's deepest liberal opinions, he offered to represent them faithfully in Parliament, unlike the Earl's conservative nominees, who went their own way on divisions and betrayed their trust.

What is the [your] party come to now? In the House of Commons there is not a grain of reputation belonging to any one member of it below the head. It is the old story of the Colossus, with the head of gold and the feet of clay. Your members, if ever they open their mouths, whose are the sentiments they will speak? Yours? . . . You will scarce venture to speak your own sentiments when these men are by. When the beginnings of the French Revolution were on the carpet at Bowood, you scarce durst own your own good wishes on its behalf. . . . Worse off you cannot be, and what chance can you give yourself for being better off without trial? You will then be represented as much as you choose . . . you will have the commencement of a little party, whose spirits will be willing, howsoever their flesh may be weak. 'New principles will, they must—in time—prevail.' How often have you said so to me for my consolation? . . . How is it they are to prevail if nobody is to begin to preach them? Is it by your means you could wish to see them prevail, or in spite of you? . . . It was my hope to have lived and died with you. There was not a place upon earth to which I would not have followed you: but that must take its chance.⁴³

More moved than angry at this unwanted zeal in his behalf, Shelburne replied urbanely, soothing Bentham and assuring him that no offer had been made. Embarrassed by his own ebullitions, Bentham apologized at once.

Being a sort of mongrel philosopher . . . something betwixt the epicurean and cynic, you must allow me to snarl at you a little, now and then, while I kiss the beautiful hands you set to stroke me.⁴⁴

Thirty years later Bentham recalled:

Time was when I should have been half mad with joy to have had a seat in Honourable House. I knew it not. I had even a half promise. Had it been a whole one and kept nobody would have been the better for it. No sooner does a man stand up to propose anything good or oppose anything bad than he is coughed down. I should have produced a coughing fit or two in it, and then I should have gone out of it.⁴⁵

In 1781 Bentham had been a Tory; by 1790 he had become a radical. As he advanced from the possible through the established guided by Lord Shelburne, his vision of the eligible gradually changed.

Empire, Foreign Policy, and the King.

The worlds of the established were many. One after another, Shelburne pointed them out and Bentham explored them, applying the principle of utility wherever he went.

Bowood was a centre, for example, of the new doctrines of free trade. Shelburne had been converted by Adam Smith himself as early as 1761, during a journey by coach from Edinburgh to London. He had been too young and ignorant to understand all that Smith told him, but he ever afterwards remembered their conversation as 'the difference between light and darkness through the best part of my life.'⁴⁶

As Prime Minister he had tried to apply the principles of free trade in the American peace treaty. 'You will already have recognized in the treatise of peace,' he wrote in 1783 to his friend and fellow free-trader, the Abbé Morellet, 'the great principle of free trade, which inspires them from beginning to end.'⁴⁷

Naturally some of his enthusiasm rubbed off on Bentham, who now began to study economics for its own sake rather than as a subordinate branch of civil and penal law. Bentham made an intensive study of *The Wealth of Nations* and became another disciple of Adam Smith. In Russia in 1787 he wrote his first important economic manuscript, *Defence of Usury*.⁴⁸

Another subject constantly on the carpet at Bowood was the unsatisfactory state of the Elizabethan Poor Laws. Once again, the problem was not new to Bentham. He had already considered

one part of it, temporary unemployment, under Indirect Legislation.

But Lord Shelburne, as a great landowner responsible for the welfare of hundreds of tenant families, was vitally interested in all problems of social maladjustment. He asked for Bentham's advice about care for the aged, the ill, widows, and orphans, as well as the able-bodied unemployed. Bentham of course responded. He inspected poor-houses, collected statistics, read the literature, and criticized its sentimentality.

Because most of Shelburne's estates were in Ireland, it was inevitable that Bentham should sooner or later turn his attention to that long-cursed island. But for a few happy years under Grattan's leadership between 1777 and 1783, the story of Ireland seemed to him a history of unrelieved wretchedness. He explained in 1823, as an argument in favour of democracy:

Profiting by the weakness of England [during the American War], Ireland had raised herself within an ace of independence. It was her *quinquennium*: it was her golden age: by universal confession it was an age of concord, tranquillity, morality, festivity, and happiness.

But for . . . sinister aristocratical interest . . . she would have substituted, to her still increasing misery, that felicity which never can be seen on this side of the Atlantic, till it has been imported from the other.⁴⁹

In the same way, Lord Shelburne made imperial and colonial issues seem real and important. Before they met, Bentham had thought of the British Empire as so many areas ripe for Utilitarian legal codes. India was his major interest. British possessions there had grown so recently, rapidly, enormously, and anarchically under the private government of the East India Company that it was a law reformer's paradise. India offered him a fascinating challenge: were his Utilitarian codes truly universal? How easily could they be adapted to fit an exotic Asian civilization? Eventually his reflections became an *Essay on the Influence of Time and Place in Matters of Legislation*.⁵⁰

Meanwhile, he experimented in his usual fragmentary way with a series of exordiums or introductions to proposed codes, lists of expected good results, orders of procedure, and addresses to the Governor-General offering to codify. In an early exordium he cried:

Worshippers of Christ, followers of Mahomat, children of Brama, read and attend. I J. B. have proposed, the Great King, the King of Great Britain, the Sovereign of the Sea hath commanded, the Lords and Commons of Great Britain, his chosen counsellors, have assented, the Lords of victorious fortune, that East India Company, his subjects and their servant the Governor of this land and his counsellors have approved and will execute – be obedient and be happy.⁵¹

This flourish was to have been followed by a doubtful and patronizing historical sketch of British power in India. Bentham gave an outline:

That the English had no original areas of conquest: that quarrels arose: quarrels produced war, and war ended in conquest – Gods decree that the Mogul Empire should fall to ruin, that the King of Great Britain has taken the country into his protection: that his great study is the happiness of the people – that the King sent Judges to protect the people, that the judges were unwise and did amiss, that the King hearing this made amends to the sufferers for the present, till he could establish your happiness upon the sure foundation of permanent laws.

Ascendancy of the English over the native, in strength of body and in mind: in acts and aims: in wisdom and in understanding. As the Bramin is by nature superior to the [untouchable] . . . so is the European to the Bramin: so is the Englishman to another European.⁵²

Bentham then appealed to the Governor-General:

That a complete and explicit code of laws . . . is the greatest blessing any country can possess is a truth which I suppose there will be no occasion to demonstrate: that the British territories in Indostan have at present a more particular need of such a system is what your Lordship I imagine . . . is fully sensible of: such a Code . . . it is the purpose of the present address to offer to your Lordship.⁵³

At Bowood Bentham's interest in India broadened from the legal to the political. After the settlement of the American War, probably no problem of British foreign policy was more urgent than the future government of India. Shelburne made the peace; his successors turned at once to the Indian question. He turned to it with them, no less interested out of office than in.

India was governed under Lord North's Regulating Act of 1773, designed to establish a balance of power between the

Crown and the East India Company. In fact, it produced constant collisions of authority and failed disastrously. As the first order of business of the Fox-North Coalition, Charles Fox introduced an India Bill that proposed to transfer patronage from the Company to a government-appointed commission. Because it seemed a bald manoeuvre of party warfare, the Bill was thrown out in the House of Lords and George III dismissed the Coalition.

In 1784 Pitt brought forward his own India Bill, which became law. It provided for a government Board of Control over revenue, civil, and military affairs while the Company kept its monopoly of trade and patronage. Under this dual management India was governed for the next seventy years.

The merits and demerits of these Bills were exhaustively explored at Bowood. As Bentham listened to the harsh facts of Whig and Tory power politics, he learned two significant lessons. Under the rhetoric, imperial glory was another name for personal plunder; an empire was another battle-ground of party warfare, further removed from home. He became and ever afterwards remained a resolute Little Englander, admonishing all nations to *Emancipate Your Colonies!*⁵⁴ Lord Shelburne, however, was and remained a champion of Empire. Their friendship was undisturbed. They simply agreed to disagree. When Warren Hastings, the ex-Governor-General of India, was tried for corruption and cruelty in 1788, Shelburne defended and Bentham denounced him. Yet when Shelburne asked for legal advice about the trial, Bentham gladly gave it, and at that moment their friendship was never stronger.

In 1790 Bentham remembered the India Bill debates and his own unusual support of Fox.

Mr. Fox's E. India Bill I regarded as eminently good with reference to the natives, as bad rather than otherwise with reference to the *permanent* interests of our own island. It was good in as far as it took the people out of the hands of by far the worst constituted species of government conceivable, and that a secret and irresponsible one: the government of a fluctuating body of merchants . . . residing at the opposite end of the world. It was bad in as far as it concentrated a large body of influence and vested it in the hands of Ministers. I should notwithstanding at that time have voted for that bill: my hopes from it in favour of the people of Hindostan being much stronger than my fears from it in favour of the people of Great

Britain. I should have voted for it . . . in preference to Mr. Pitt's. But I should not . . . now. The goodness of Mr. Pitt's measure has been proved by experience. A happy choice of persons at the outset put things into a good frame: in that frame, having once got into it, it seems reasonable to hope they will continue.⁵⁵

Finally, overriding all of Shelburne's many interests was foreign policy. Certainly few men in England could equal his expertise. He was intimate with many leading foreign statesmen and kept paid informants in the major capitals. Given a choice of office, he preferred to be a Secretary of State. This was still another new world of experience he opened to Bentham, who explored it with his customary eagerness. As usual, his first reflections were analytic and legal. Between 1786 and 1798 he wrote *Principles of International Law*,⁵⁶ including that typical Enlightenment phenomenon, 'A Plan for a Universal and Perpetual Peace'.

From Russia, where most of this essay was written and news arrived months after it was made, Bentham easily took an objective and dispassionate view of British foreign policy. But home in England again he lost his earlier calm. He immediately renewed his subscription to the *Leyden Gazette*. Since 1766 he had been a devoted reader, as all Englishmen interested in foreign policy had to be. There was no other public source of information about British diplomacy, a subject unknown to the home press. For over a century the *Leyden Gazette* had borne the responsibility that properly belonged to domestic journals of printing British diplomatic dispatches.

In the *Gazette* Bentham was dismayed to discover that William Pitt was planning an aggressive war against Russia. Frightened by Catherine II's unbridled imperialism, he had formed a Triple Alliance with Prussia and Holland against her. In 1787 she began a second Turkish War.* While she was preoccupied on the Black Sea, Gustav II of Sweden invaded Russia in the north, determined to regain the territories he had formerly lost to her. Pitt welcomed Gustav's check to Russian expansion, and when

* In which Sam Bentham was a hero. In 1788 the superior Turkish fleet attacked a small Russian group of river barges led by Sam. He had equipped his seemingly vulnerable fleet with 13-in. mortars, a unique experiment in naval warfare. While some of his barges bombarded the Turks, he set others aflame and sailed them directly into the enemy. Ten Turkish ships blew up; the rest of the fleet panicked; and the Russian victory was complete.

Denmark prepared a Swedish invasion to honour a Russian commitment, the British Minister in Copenhagen issued a stern declaration. If the Danes invaded, England and her allies might declare war.

Alarming as Pitt's threats were to a profound pacifist like Bentham, he was no less alarmed by the ignorance of the average Englishman about them. The dispatches printed in the *Leyden Gazette* were read only by a sophisticated few. To undo the general ignorance and spread the alarm, he hurriedly wrote three *Letters of Anti-Machiavel*,⁵⁷ attacking the Danish Declaration as insolent interference by a great power in the affairs of a small one. He was careful to include the text of the Danish dispatches. In the event, the Danes invaded Sweden and England did not declare war. In themselves these letters are insignificant pieces of high-strung journalism, but their effects reverberated throughout Bentham's future work, as soon as 1790 and as late as 1829.

Within a year he became a democrat. During the 1780s, guided by Lord Shelburne from the possible through the established, Bentham became ever more critical of English government. At the same time he valued the English constitution for its popular checks on bad government – juries, free speech, a free press – and he conceded that these checks were becoming still more valuable as education, newspaper circulation, and the accuracy of parliamentary reporting increased. But in 1789, as he read of Pitt's schemes in the *Leyden Gazette*, he suddenly became aware that the constitution was silent about foreign affairs. The 'liberties' of Englishmen did not extend to them; they were therefore unrestrained by popular checks. To Bentham good government meant responsible government, but in the area of foreign policy, the English government was entirely irresponsible. He explained:

Ministers take advantage of the general ignorance of foreign affairs – of the mystery that enwraps the subject. . . . Foreign affairs – the grand *arcantum* of politics.

Mr. Pitt has been stalking over Europe for years past, spitting in the face of one sovereign and giving a kick to another. . . . It is not this treaty alone . . . it is not preferring Prussia to Russia that I condemn. It is not this or that step but the whole system of Machiavellism that he has been pursuing. . . .

There seems to be a sort of tacit convention among the people of

this country to watch over the conduct of Ministers in internal concerns, but to abandon foreign affairs to their guidance without reserve. . . . We give them this compact – let our liberties alone, you shall do as you please with the liberty and happiness of other nations of Europe.⁵⁸

Formerly his attitude towards monarchy wavered between approval and disapproval. It now changed to fixed contempt. So far as he could discover, Pitt's war threats were echoed by George III. As a Little Englander, Bentham was troubled by George's retention of Hanover. In 1789 he said:

It is a plain maxim of policy not to suffer the same man to possess two places the one of which must corrupt the other. Under the law of England, no man is to be at once an Attorney and a Justice of Peace. For reasons much more cogent, no man ought to be at once King of his country and Elector of Hanover. A law for form's sake disables a King of England from engaging the nation in a war . . . for the concerns of Germany. . . .

That law did not prevent Hanover from being paved with British gold and fertilized with English blood by the first Pitt: it will as little prevent its being paved and fertilized in the same manner by the second.⁵⁹

In 1788–89 George III suffered a second attack of madness and Bentham became even more alarmed. In 'A Short History of the Whigs' he later explained:

George's wife had given him so many children, she had made him popular. George triumphed. . . . No sooner had his Majesty lost his royal senses; than his popularity became complete. Nothing could shake it.⁶⁰

Mad or sane, George continued to support Pitt and his aggressions.

In that sacred bosom of his Majesty, the virtues of a husband are so exuberant, that he might afford to change some of them for the virtues of a King. . . . In my scale of virtue, I must confess it, justice stands above continence. God forbid I should ever be a preacher of any kind of infidelity. But were I to choose for my Sovereign between sin and sin, I would rather the bedchamber than the cabinet should be the scene of it.⁶¹

These clumsy sarcasms hid a real fear. During the first decades of his reign George III had been unpopular. In a way his unpopularity had been a guarantee of good government, for it kept the public critical spirit alive. By 1789, however, his domestic virtues and insanity, his role as 'Farmer George', an eager amateur of scientific agriculture, and a recent assassination attempt combined to make him a sympathetic and popular figure. Sympathy was an equivocal, even dangerous, virtue because it killed the critical spirit and therefore responsible government. Bentham was afraid that domestic government would now sink to the same depths of uncontrolled mismanagement in which foreign policy had long floundered.

In 1829 he planned a second edition of the *Letters of Anti-Machiavel*, an honour so far reserved for the obviously important *A Fragment* and *The Principles*. Why did he value these negligible letters so highly? It is a revealing and pathetic story of wishful thinking. The old sage, now an octogenarian, remembered with pride, 'I sent the . . . anti-Machiavels to Pitt the second. The war was given up.'⁶²

Bentham was wrong. The war was not given up. In 1791 Pitt announced new plans for a Russian war; nine days later he was forced to repudiate them. Some of his Cabinet were against it; the entire Opposition, eloquently led by Charles Fox, was against it; public opinion, mobilized with a rapidity and force rare in the eighteenth century, was against it. The Russian war was then abandoned – in 1791 not 1789 because Pitt ran into a wall of parliamentary and popular opposition, not because Bentham wrote strong letters.

His memory was mistaken but it was consoling. Unable to face the bare record of his career, which seemed to list one grim failure after another, Bentham began to spin myths. For sixty years he had been chained to reform like Ixion to the wheel, whirling endlessly around the hell of English law. Yet the law was almost the same incomprehensible uncoded chaos in 1829 as it had been in 1769. It was true, his name was known throughout the civilized world and the army of Utilitarian disciples grew larger yearly, but what practical results could he show? Very few, and those often imaginary. As he claimed with some evidence that Sir William Blackstone had amended his Hard-Labour Bill to meet Utilitarian objections, so he claimed with no evidence that Pitt abandoned the Russian war. In the same

way, he took credit for killing Pitt's later Poor Bill, a hasty patchwork that offered free cows among other benefits, though that too was undone by public opinion.

Bentham rationalized his failure in another odder way. He invented a conspiracy theory in which George III secretly plotted to destroy him. Again the *Letters of Anti-Machiavel* played an important part. As a preface to the new edition he wrote a 'History of the War between Jeremy Bentham and George III by one of the Belligerents.'⁶³ These letters were the opening campaign of the war. After the first two appeared, the *Public Advertiser* printed an answering defence of government policy signed 'Partizan'. 'So, here's an antagonist you have got,' Lord Shelburne exclaimed to Bentham. 'Do you know who he is?' 'Not I indeed,' said Bentham. 'Well, I will tell you: it is the King.'⁶⁴

For many years Bentham was sceptical. He too sometimes thought Shelburne devious, and suspected:

that for the sake of keeping up the ball, he had himself engaged some friend . . . to write it . . . and that in the notion [that George III was 'Partizan']*] his object was to sharpen my exertions. . . . I acted as I should have done had [the suggestion] . . . never been made. I sent a reply which was inserted, and there the matter ended.⁶⁵

In later years, however, Bentham no longer doubted. He told Bowring of the persecution he suffered:

Who Anti-Machiavel was, became soon known to this same 'best of Kings'. . . . Imagine how he hated me. . . . After keeping me in hot water more years than the siege of Troy lasted [over the fate of Panopticon], he broke the faith of Parliament to me. But for him all the paupers in the country, as well as all the prisoners . . . would have been in my hands.⁶⁶

Puffer and Carper.

What were these serio-comic ramblings but 'croaking', a vice that Bentham himself deplored? In 1796 he wrote an essay, 'The Croaker and the Carper', justifying 'carping' or constructive criticism and condemning 'croaking' as complaint for the sake of complaining and vicious. He denied that he 'croaked'.

* Not so far-fetched, for George's letters appeared in Arthur Young's *Annals of Agriculture*, signed 'Rafe Robinson'.

The carping at this or that object has been the business of my whole life (for every would-be reformer or improver is pro tanto a carper) yet as to the sum of things . . . I have always had more of the puffer in me than the carper: that is if a name taken from the habit of exaggeration must be taken and the endeavours I have always used to rank myself in the class of impartial estimators should be denied.⁶⁷

Bentham struggled throughout his life to remain impartial, to hold a balance between carping and puffing. He sank to croaking at last, but it is wonderful how long he kept his equilibrium. The provocations were great, and never greater than in 1789, as the *Letters of Anti-Machiavel* testify. They hover between carping and croaking in the same pitch of near-hysterical abuse that weakened *A Fragment on Government*. What aroused him to this frenzy?

His own disappointed expectations. He had returned from Russia in 1788 a puffer, radiant with new hopes. His friends had lured him back with glowing descriptions of a new progressive era under Pitt. In February 1787 James Trail wrote, 'Our ministers, as they have little to do abroad, seem to be full of schemes for domestic improvement'.⁶⁸ In April George Wilson agreed, 'To use the words of a great author – "it is a busy age, and everything teems with improvement". Our customs are consolidated, and in three weeks our ports will be open to the French. The Crown-lands are in a way of being sold. Great materials have been collected for a revision of the Poor laws. . . .'⁶⁹

Sam also was lured and wrote to Pitt offering his services to the Government:

If I do not deceive myself, the reception given to some late successful projects seems to hold out . . . a general assurance that while power remains in the hands it is in . . . novelty will not be a conclusive objection to any plan which appears to have utility to commend it.⁷⁰

Now as never before, Bentham saw an opportunity to translate Knowing into Doing. With Sam's Panopticon as the instrument, he planned a complete reconstruction of the British prison system. In 1787 he wrote his father a series of letters describing the plans, printed in 1791 as *Panopticon, or, The Inspection-House*. They began with a rousing puff:

*Morals reformed – health preserved – industry invigorated – instruction diffused – public burthens lightened – Economy seated, as it were, upon a rock – the gordian knot of the Poor-Laws not cut, but untied – all by a simple idea in Architecture!*⁷¹

One obstacle was already overcome, for Bentham remembered that the Blackstone-Eden Hard-Labour Bill of 1778 authorized the construction of penitentiaries.

Another obstacle, the chronic doubts of officialdom that reform was practical, could now be overcome. In Russia Bentham had seen Catherine's large-scale social experiments with his own eyes, and now had evidence that reform was not only necessary but easy. In *Panopticon* he wrote:

By coming here, if I have learnt nothing else, I have learnt what the human powers are capable of, when unfettered by the arbitrary regulations of an unenlightened age; and gentlemen may say what they please, but they shall never persuade me that in England those powers are in any remarkable degree inferior to what they are in Russia.⁷²

In Russia the distance between the possible and the eligible was small because Catherine had overthrown the established. When Bentham returned to England in 1788 the road from the possible to the eligible still wandered haphazardly through the established. As before, the only way to enter the tight aristocratic-monarchical circle of power was through 'connections'. As before, Bentham's only 'connection' was Lord Shelburne, now inactive and powerless during Pitt's vigorous popular administration. Before Panopticons became eligible, therefore, Bentham had to find new 'connections', powerful men of good will prepared to support him through tortuous vicissitudes of parliamentary negotiation. In the event, he found them, but the necessary supporting legislation authorizing land purchase for his prison was passed only in 1794; and after years of frustration no Panopticons were built.

Bentham's first disappointment was the discovery that his friends' reports had been exaggerated. Reform in England was not perhaps impossible but it was surely a long exhausting struggle.

His second disappointment was the discovery, revealed in the

Leyden Gazette, that government was more interested in war than peace, in foreign aggression than domestic reform.

His third and critical disappointment followed upon the French Revolution, a revolution more radical and more cosmopolitan than any the world had ever seen. In one tremendous outburst of national energy, the French overthrew the oppression of centuries and began to rebuild an entire society, inviting the aid of all men of good will everywhere. Bentham rejoiced and accepted the challenge. When he began to consider what was eligible for a new-model France, he cast about for relevant examples, and now for the first time had a compelling Utilitarian reason to survey English society whole in all its established imperfections. Since 1781 he had been following Lord Shelburne's lead through the maze of constitutional law, King, Lords, and Commons in Parliament assembled, party warfare, Indian and Irish administration, the Poor Laws, and foreign policy. Nothing he discovered satisfied him. At every turn he carped more than he puffed, but as he sped from one new interest to another he never doubted that his criticisms were peripheral only and did not touch his basic loyalty to English institutions.

The French Revolution forced him to doubt. He had been a piecemeal social critic; now he became a general sociologist. He had always tried to balance carping and puffing; now, after adding up the list of imperfections in English society, he no longer saw much to puff about. He had once been an indifferent Tory; by 1790, appalled by the sum of established evil, he had become a democrat and a parliamentary reformer.

What were the stages of his conversion to democracy? How did he greet the French Revolution? What were the challenges it offered him and how did he answer them? Were these answers, designed for revolutionary France, relevant to English problems? How were his French analyses transformed into English radical reform?

CHAPTER 8

1 A. M. 33553, 12 January 1828, 'History of the Intercourse, etc.'

2 X, 115.

3 A. M. 33539, 68, 27 July 1780.

4 *Ibid.*, 71-2, 6 August 1780.

5 See X, 88ff. for his delightful accounts.

6 Everett, *The Education*, *op. cit.*, 125.

7 Wraxall, *Historical Memoirs*, *op. cit.*, II, 59.

8 X, 116-17.

9 B. 169, 141, 1781, undated.

10 *Ibid.*, 133.

11 II, 270. 12 I, 142.

13 *Ibid.*

14 *The Structure of Politics*, *op. cit.*, I, 55.

15 B. 170, 182, *ca.* 1795.

16 *The Limits*, *op. cit.*, 298-9.

17 B. 69, 591, Preparatory Principles.

18 *Ibid.*

19 *Ibid.*, 395.

20 *Ibid.*, 160.

21 *Op. cit.*, 175-6.

22 II, 16; English extract translated from Dumont's first French popularization, the *Traité*s, 1802. Though most the MSS. from which Dumont composed the *Traité*s were written in the 1770s, Bentham oversaw and approved all of it.

23 B. 27, 166, *Critical Elements of Jurisprudence*.

24 *Ibid.*, 124.

25 I, 185, *The Influence of Time and Place*.

26 *Ibid.*

27 *Political Thought*, *op. cit.*, 117.

28 II, 270-1, *Leading Principles*.

29 *The Theory of Legislation*, *op. cit.*, 252.

30 Edmond Fitzmaurice, *Life of William, Earl of Shelburne*, (London: Macmillan and Co., 1876), II, 171-3.

31 *Sybil: or The Two Nations* (London: Oxford University Press, The World's Classics, 1950), pp. 16, 18.

32 A. M. 33539, 253, 12 October 1781, to Miss Davies, daughter of the family with whom he boarded in the summer at Brighton.

33 B. 27, 121.

- 34 *Ibid.*
35 *Ibid.*, 102.
36 B. 104, 439ff.
37 Fitzmaurice, *op. cit.*, III, 572.
38 X, 187. 39 I, 248. 40 X, 70, 1773-4.
41 Fitzmaurice, *op. cit.*, II, 359.
42 B. 87, 126, *ca.* 1782.
43 X, 236-242.
44 *Ibid.*, 245.
45 B. 132, 419.
46 Halévy, *La Formation*, I, 344.
47 Fitzmaurice, *op. cit.*, III, 323.
48 III, 1-29; Stark, *op. cit.*, I, 124-207.
49 I, 251.
50 I, 169-94, 1780s.
51 B. 169, 97, 1770s.
52 *Ibid.*
53 *Ibid.*, 121.
54 IV, 407-18, a pamphlet addressed to the French National Convention,
1793.
55 B. 126, 7.
56 II, 535-60.
57 X, 201-12, printed in the *Public Advertiser* in 1789.
58 B. 25, 106, 110.
59 *Ibid.*, 107.
60 B. 104, 439ff.
61 B. 25, 109, 1789.
62 X, 212.
63 A. M. 33530, 365-416.
64 X, 212.
65 B. 128, 116, 1809.
66 X, 212.
67 B. 153a, 232.
68 X, 172.
69 *Ibid.*
70 A. M. 33540, 542, not sent.
71 IV, 39, Bentham's italics.
72 IV, 52.

A Map of a New World

The French Revolution and Democracy 1788-1791

[The French Revolution] 'was obliged to declare war simultaneously on all established powers, to destroy all recognized prerogatives, to make short work of all traditions, and to institute new ways of living, new conventions.'

DE TOCQUEVILLE

A Workshop of Revolution.

The year 1788 was no time for brooding. Louis XVI called a meeting of the French Estates General for May 1789, the first to be held since 1614. At the same time he acknowledged French inexperience of representative government and invited suggestions for procedure and organization of the fateful assembly. Bentham at once saw the glorious opportunities for reform, forgot his insular preoccupation with Pitt's Russian war, and for the next three years dedicated himself to France and her problems. In March 1789 he wrote to Lord Shelburne's son:

You are to know that, for these five or six months past, my head and heart have been altogether in France; my own affairs, I think no more of them than of those of the Georgium Sidus.¹

Lord Shelburne, a passionate Francophile, urged Bentham on and guaranteed him an audience of leading Frenchmen, among them his good friends Morellet, Mirabeau, and the Duc de la Rochefoucauld. From Bowood in 1789 Bentham wrote to his father, 'All eyes here are eagerly fixed on French politics as you may imagine; and full of joy at the dawn of prosperity that opens to them.'²

Their enthusiasm was shared by most educated Englishmen, for the revolutionary ideal was universal. As de Tocqueville explained, it was:

nothing short of a regeneration of the whole human race. It created an atmosphere of missionary fervour and, indeed, assumed all the aspects of a religious revival.³

Englishmen rushed to France to watch the revolutionary show and returned converted democrats. The future Lord Erskine had a coat made of the Jacobin uniform with buttons inscribed 'Vivre libre ou mourir'.⁴ Cambridge University offered a prize for the best Latin essay, 'Whether the French Revolution is likely to prove advantageous or injurious to this country,' and awarded it to an affirmative entry.

In the Shelburne circle, however, enthusiasm did not dwindle to aimless emotion: it was directed to Utilitarian ends. Lord Shelburne became the overseer of a radical writing-shop. To speed production, he installed Bentham in an attic suite at Lansdowne House in the autumn of 1789. Generously supplied with books and papers, Bentham set to work creating a new world for the French. Nor was he the only member of the workshop. His beloved new friends Etienne Dumont, by now editor of Mirabeau's newspaper, the *Courier de Provence*, and Samuel Romilly* were also pressed into service. Dumont shared the attic with Bentham in order to translate his pages as soon as they were written and Romilly wrote a treatise on parliamentary techniques.

Bentham was never happier, passionately serving a noble cause with those he loved. Again and again he lingered over the memory of those feverish but inspired days. He often described how *A Draught for the Organization of Judicial Establishments* was composed and printed, in Dumont's absence, in English.

Anxiously attentive to the work throughout its progress was my Noble Host. At length the glad tidings reached him that the impression . . . had reached his garret: up he came, put together a hundred copies and down he went with them on his shoulders.⁵

In 1828 Bentham wrote to Shelburne's son:

* 1757-1818, leading barrister and law reformer, knighted and made Solicitor-General, 1806.

Figure to yourself, your Father and your humble servant, running down stairs together. . . . Your said servant at his ease: the Patrician bearing on his back a decent porter's load, which he would not suffer his plebeian companion to lay a finger on.⁶

He continued elsewhere:

Barthélemy, the French Minister, was then sitting in one of the rooms on the ground floor. Into the room went Lord Lansdowne and threw down his burden at the feet of the diplomatist. 'Take charge of these books,' said he, 'and send them to the Duc de la Rochefoucauld.'⁷

They need not have hurried. When the Duc introduced a motion before the National Assembly that the work be translated, he was voted down.

In the charged atmosphere of Lord Shelburne's workshop, Bentham became a democrat. The Revolution gave him the occasion, and Romilly and Dumont gave him Utilitarian evidence that democracy worked. Lord Shelburne's abstract democracy based on Dr Price's natural rights had never seemed more than unreal verbalism to Bentham, and he had remained unconverted. Before the United States became independent, Geneva was the best operating model of democracy. Dumont was a citizen, and Romilly's family was also Genevan. Both men had lived there, studied its politics closely, and now hailed the blessings of democracy. They both justified it independently on Utilitarian grounds.

Indeed their common Utilitarianism brought them all together. Either just before or immediately after his trip to Russia, Bentham could not remember which, George Wilson introduced Romilly as an admirer and fellow Utilitarian. Romilly then introduced Dumont. Bentham and Romilly dined together at the Crown and Rolls, inaugurating a deep and loyal friendship that ended only with Romilly's suicide in 1818. Overjoyed as Bentham was to meet so sympathetic and intelligent an advocate of utility, he was a bit shocked by Romilly's radicalism. In 1819 he wrote a memorial to his great friend.

That one principle upon which all my other principles hang . . . that the greatest happiness of the greatest number is the only true and

defensible end of government – in all our conversation from first to last . . . was always confirmed as the one true principle. But . . . it had been his before we ever met. . . . Sprung from a race of expelled French Protestants nurtured in the most illustrious of Commonwealths, he had from earliest youth been wont to see that principle applied to practice . . . as closely as before the rise of the American Commonwealth it ever had been applied. . . . Before he had ever seen me . . . his studies had been of the republican cast.⁸

Romilly was not only a brilliant but a morally sensitive man, and Bentham valued his judgment highly. 'Never – I think never – did any work of mine [appear] . . .' he said, 'but as soon as I myself had one, Romilly had another copy of it.'⁹ Their friendship, he concluded was:

never from first to last clouded for so much as a moment or with so much as a single word – scarcely with so much as a single thought of dissatisfactions.¹⁰

When Romilly praised democracy and revolution, therefore, some of Bentham's misgivings about them disappeared. Some had already disappeared. Even before Romilly and Dumont supplied him with Genevan evidence, Bentham had been greatly impressed by the United States where revolution had led, not to anarchy, as he had feared, but to tranquillity and prosperity.

During the 1770s many Jeremiahs had prophesied the doom of British industry if the American colonies were lost. They were wrong. The British economy recovered amazingly. Never was trade with America greater than after her independence, and England enjoyed a general economic boom that reached its peak in 1792.¹¹ Formerly so harsh a critic of the American cause and loyal a disciple of Adam Smith, Bentham was by 1787 very willing to confess that Smith and he had been mistaken.

Dr. Smith observes [that] . . . the separation would be a misfortune not to us only, but to them. . . . The event has not been favourable to this prophecy. Among these rebels, every thing breathes contentment and unanimity.¹²

Though Bentham deplored the natural rights metaphysics of the Declaration of Independence and the Constitution, he came to admire 'that newly created nation, one of the most en-

lightened, if not the most enlightened, at this day on the globe.'¹³

Like the principle of utility itself, Bentham's general principle of revolution remained the same throughout his life. His prepossessions were always in favour of establishments. The first subordinate end of good government is security, settling and guaranteeing expectations, and revolution is anarchy, the enemy of security. Revolution may, however, be Utilitarian. At what point should a man break his habit of obedience to government? His answer was always the same.

Shall this habit of obedience be continued unbroken, or shall it be discontinued? . . . Is there more to be gained than lost in point of happiness by its discontinuance? . . . It is an affair of calculation: and this calculation each one must make for himself according to circumstances.¹⁴

Nor did Bentham's principle of prevention change: let governments encourage civil liberty, 'the perfectly unrestrained communication of ideas on every subject within the field of government'.¹⁵ As early as 1782 he said, 'I conclude that those who are left free to associate unquestioned, unmolested, in the face of day under the protection of the law will never have recourse to insurrection.'¹⁶

It was on the middle level that Bentham's ideas about revolution changed. They followed the same path from possible to established to eligible that all his thought followed. During the 1770s he did little more than define revolution, listing it under 'Treason' in his catalogue of offences. Definitions of treason, however, belonged to constitutional law, and that did not yet engross him. As he moved from the possible to the established and saw how successful the Geneva and American experiments were, he lost his fear of revolution. In 1789 he welcomed the French Revolution unreservedly.

The National Assembly of France has been charged with madness for pulling down establishments [but] . . . if you would have a good house in the site of a bad one, you must pull down your bad one.¹⁷

As the Revolution gained momentum and rushed headlong into war and the Reign of Terror, it left Bentham far behind, a saddened critic. But not before it had made him a sociologist-despite-himself. The National Assembly aimed at nothing less

than a complete re-creation of French society. As their willing servant, Bentham was forced to examine the whole interlocking structure of institutions and authority. By 1795 he was ready to locate revolution in his new sociological structure.

According to him, the logic of the will is a logic of social classes. The chief power of the legislator is aggregation and disaggregation, that is, the power of distributing men into groups. Laws are general commands, directed to classes of men rather than individuals. When the legislator excluded entire social groups from some kinds of action, when he established or perpetuated closed aristocracies or religious tests for public office, he sowed the seeds of civil war.¹⁸

Turning in horror from the French excesses, Bentham applied this analysis to the facts. Why did the Revolution occur in France? Why were England and America tranquil in 1795? The *Ancien Régime* excluded the *bourgeoisie* from certain kinds of action. Swarms of these men, educated, unemployed, frustrated, restless, gathered together in Paris and smashed the chains of the old class logic. America was quiet because most of her citizens were farmers. She had few large cities.*

On the other hand, London as well as Paris was the centre of national life, a magnet for thousands of ambitious professionals. But England was blessed with a flexible class logic. Under her system of government, it was possible to rise from the bottom to the top. A poor and ragged law student like Thomas Erskine could rise to the Lord Chancellorship and the House of Lords. The peerage was open and enough prizes were dangled to keep most unruly spirits in the track of ambition.

Bentham's theory of democracy underwent the same transformation as his theory of revolution, supported by the same evidence. His early indifference to forms of government and the facts of political life was partly fear. From his sheltered study at Lincoln's Inn, 'the people' seemed remote and a bit frightening. The only members of the working class he met were servants. He shared the conventional prejudice that 'the people' were riotous and unpredictable, though they could and should be tamed by education. Under the heading 'Public Virtue in the Body of the People' he wrote in 1773:

* Bentham's point about the revolutionary importance of cities was emphasized by de Tocqueville, *op. cit.*, Part II, Chapter 7.

The great body of the people can have no other virtue but zeal, no other corruption but indifference. It is impossible they can be zealous against their own political interests: but they may be so immersed in their private interests as to neglect them. . . . The people is my Caesar; I appeal from the present Caesar to Caesar better informed.¹⁹

By 1790 Bentham's fears had left him. The trip to Russia first opened his eyes. 'Russia is an instance,' he said, 'of the ease with which a new direction may be given to the opinions of a whole people.'²⁰ The examples of Geneva and America strengthened his new conviction. He now wrote sincerely:

But I have not the horror of the people. I do not see in them that savage monster which their detractors dream of. The injustices of the Athenians, had they been ten times as frequent as they were, would not . . . be much to the present purpose. Had the Athenians representative bodies? – had they the light of two thousand years of history to guide them? Or the art of printing to diffuse it? . . . Much sooner would I look to America, where the people bear undisputed sway, and ask, in so many years of popular government, what violences or injustice . . . have ever yet been presented by the history of the thirteen commonwealths?²¹

One key to American success, Bentham was sure, was her absence of Empire. A democratic government must be simple, so that every man may understand and do his duty. But colonies breed complexity. An imperialist government 'excludes the possibility of a popular government by the incapacity of the people to comprehend the business of Government – advantage of the Americans in this regard.'²²

Long before the French Revolution, therefore, Bentham sanctioned revolution; and long before the National Assembly's timid advances toward representative government he boldly recommended a republican democracy to them.

He recommended it, however, only for the French. He never confused France with England and never supposed that French possibilities were English ones. In 1792 he declared:

The different forms of the two governments present no obstacle to my thoughts. The general good is everywhere the true object of all political action. . . . I should think myself a weak reasoner and a bad citizen, were I not, though a Royalist in London, a republican in Paris.²³

They were two distinct worlds and he drew different maps of each. First, what kind of map did he make for France?

More Revolutionary than the Revolutionaries.

No sooner did Louis XVI call for suggestions for the organization of the National Assembly than Bentham responded. He immediately wrote *An Essay on Political Tactics*,²⁴ based on English parliamentary procedure. Indeed he worked with frantic speed, convinced that unless the National Assembly followed a systematic procedure for hearing, co-ordinating, and applying opinions, it would be a mere talking-shop, unable to act. Early in 1789 he sent his *Essay* and explained his conviction to the Abbé Morellet.

If your system of Tactics is really in that deplorable state in which I have represented it, I do not see how it is possible for the States [Estates] to do anything without changing it.

I could wish that these sheets were translated and sent off to be printed sheet by sheet that no time may be lost in getting out this part before the meeting. . . . Were I on the spot, and were you to view the importance of the matter in the light that I do, I would . . . employ people to stand at the doors with copies to sell to the Members as they went in, [and to] send copies gratis to the poor members such as curés and Labourers.²⁵

Bentham offered to underwrite the expense, continuing:

I am not rich: yet rich enough to have always a little sum at command for my pleasures, and in that list I know of nothing superior to [contributing] . . . useful instruction to your country in payment of the great debt I have contracted. . . . From the preceptors that were chosen for me [English fellows of Colleges, English monks]* I never got anything: those I chose for myself . . . and from whom I got the seeds of almost everything I value myself for were mostly Frenchmen: Helvétius, D'Alembert, and Voltaire.²⁶

Nor was Bentham's estimate of the importance of parliamentary tactics exaggerated. Unwilling to follow the advice of foreigners, unable to settle the mechanics of procedure among

* Bentham's note.

themselves, the National Assembly fulfilled his gloomy prediction: it became a mere talking-shop.*

As concerned with the theory as the practice of future French government, Bentham began a treatise on constitutional law in 1788, urging the French government to remodel itself before it was forcibly overthrown. He asked, when is the proper time for reform?

Efforts . . . have [been] made in a time of discontent out of pique. . . . They ought to be made under a popular minister [Bentham is referring obliquely to Necker, the popular Finance Minister, who had recently been dismissed]. . . . It is waiting too long to wait for some unpopular act – a great deal of mischief may be done before this unwieldy engine of reform can be brought to bear. . . . When is the proper occasion for reformation? None say the anti-reformers. Under a good King it is unnecessary. Under a bad one it is impracticable.

Any and every [time] say the friends of reason and mankind. Under a bad King, for there it is particularly necessary. . . . Under a good King, for there it is necessary to guard against a bad one.

Objection. If we yield . . . there is no saying where it will end.

Where should it end but in the perfection of reason.²⁷

Bentham then considered the question, if the Estates General were called regularly in the future, how should its representatives be chosen? The Abbé Morellet was delighted and wrote to him:

We badly need, and so do you and Europe and America, a good theory of national representation . . . no one is in a better situation than you are to render this good office. I do therefore greatly desire that you do a treatise on representation. I believe . . . that our nation is too numerous and too unenlightened, or rather too grossly ignorant, to have a truly democratic representation, complete, formed by suffrages located among the lowest classes of citizens. I would be delighted if you would confirm me in this idea if you are led to this result, or if you would correct me if it does not seem just.²⁸

* As de Tocqueville corroborated: 'Despite [their] . . . harmony of sentiments . . . the inexperience and the novelty of their situation made the first sessions ludicrous and confusing. Everyone spoke at the same time; they argued without clear aims; they did not know the forms of address: they hardly knew each other.' *The European Revolution and Correspondence with Gobineau*, ed. and trans. John Lukacs (New York: Doubleday Anchor Original, 1959), p. 93.

It did not seem just. Bentham had already gone far beyond Morellet's hesitations. In his *Essai sur la Représentation*, planned as a major analysis of theory and practice, he called for universal manhood suffrage and the secret ballot. Moreover, had prejudice against women been less violent and universal, he would have granted them voting rights as well.

The *Essai* followed Bentham's standard form. It began with a full statement of general psychological principles, drawn from the 1770s' Axioms of Happiness, and continued through ever finer subdivisions to specific provisions and rationales. From the general proposition that every man has an equal desire for happiness, Bentham concluded that every man should have an equal vote, regardless of property qualifications. Such a qualification, he said:

cannot be too small while it is yet something. . . .

By what reason should the rich man be given more votes on account of his riches? It is exactly on that account that he should not have so much. The greater the riches, the greater the facility for influencing the votes of those who have less. It is rather to the possessor of a single qualifying portion, who is badly provided to influence anyone, to whom it would be necessary to grant a number of votes.*

According to Bentham, only radical reform could save the Bourbon monarchy from collapse. None of its iniquitous institutions was worth salvaging, and therefore he boldly recommended universal suffrage. He explained to Morellet why this radical prescription was unnecessary in England.

Nothing is so different as the position of the two nations. . . . By us, everything is already done – and well done – for the national welfare that equal representation would seem to demand. Liberty of the press, impotence of *lettres de cachet*, independence . . . impartial justice, equality of economic contribution toward expenditures, subordination of the military to the civil [power], impossibility of undertaking a war without the national consent, etc.: by you everything remains to be done. . . . And so though I should ardently wish to see you establish perfectly equal representation, I must admit I have not found sufficient reasons to form the same opinion about my own country. Enough for the moment. You do not expect to receive a

* See Appendix D below for more of this essay in my translation. For the fuller original French version, see Halévy, *La Formation*, I, pp. 455ff.

treatise on the British constitution in a parenthesis, much less one on the best constitution possible.²⁹

This noble essay is more important for what it might have been than for what it was. Once again Bentham ran from a good thing to a better, and left only fragments behind him. For what better things did he abandon his speculations? They were immediately practical. He had returned from Russia determined to put Utilitarianism to use. If prison reform seemed the best prospect for England, a reformer's purgatory, it seemed even better for France, a reformer's paradise. Bentham sent excerpts from his *Panopticon* letters to members of the National Assembly, with an offer to build a Panopticon in Paris and manage it himself. When his proposal was read before the Assembly, the members applauded loudly and ordered that the entire book be translated and printed. Through Talleyrand, Bentham received an invitation from La Rochefoucauld to carry out his plan, and rejoiced in an official triumph such as he had never known in England. In 1792, however, La Rochefoucauld was murdered. No prison was built.

In the early stages of the Revolution, Bentham's *Defence of Usury* was also welcomed. In the *Courier de Provence*, Dumont often referred to the *Defence* as a profound economic analysis. Translated and printed, it went through several editions.

These triumphs fired Bentham to further practical efforts. When the Estates General met in May 1789, he followed their debates closely, with growing concern. Overwhelmed by the flood of revolution, the Assembly floundered helplessly, unable to distinguish the trivial from the weighty, the urgent from the remote. Bentham tried to do their job for them.

Money was the central problem, he thought. Political authority rested on financial: unless the National Assembly could collect taxes and control expenses, it could do nothing else. Bentham therefore wrote a series of open letters to Mirabeau* on government finance. His first question was: given the revolutionary ideals of Liberty, Equality and Fraternity, what are the least painful steps toward economic equality a government may take? His answer was: the confiscation of remote

* Honoré, Comte de, 1749-1791, perhaps the most brilliant and powerful member of the Assembly, determined to save the monarchy despite its reluctance to be saved.

inheritances, that is, beyond the immediate family. Even as a Tory, Bentham had never considered private property sanctified and inviolable. On the contrary, confiscation was a legitimate government enterprise when it was Utilitarian. And it often was, because economic inequality produced social inequality, which pained the many more than it pleased the few. Bentham attached one condition only, that confiscation itself be as painless as possible. He recommended this 'mild and gradual' method of expropriation to Mirabeau as:

favouring *Equality* without prejudice done to *Security*, and the keeping under that tendency to Aristocracy which [is] . . . the object of so general and so just a jealousy.³⁰

Security was a greater political virtue than equality, and 'injustice in matters of property consists in thwarting expectation'.³¹ Bentham argued for his proposal to limit successions as far more just than the cruel archaisms sanctioned by English civil law.

The law of England is full of [property] limitations . . . which are full of hardship and injustice because contrary to natural expectation, and which would be contrary to indefensible natural right, if there were any such thing. Younger children of the wealthiest father [are] left without a shilling.³²

If Bentham's first principle of taxation was, thwart as few expectations as possible, his first principle of government expenditure was, spend as little as possible. In another letter to Mirabeau, on the evils of Empire, Bentham ruled flatly against colonial possessions. He gave one overriding reason: they cost more than they were worth. Profits never equalled investments, and they were made and reaped by different sets of people. The poor were taxed for the colonial aggressions that made the rich richer.

This letter marked a change in Bentham's attitude toward government expenditure, from generosity to frugality. In his earlier *Rationale of Reward* he had advised large salaries and pensions for public servants, 'by considerations of humanity, justice, and good economy: they moreover tend to insure the proper discharge of duty'.³³ By 1789, however, he was prepared to abolish them altogether. A pension, he said:

is a double source of prodigality: on the part of the officer, and on the part of the state. Invited by the assurance of being provided for after he has ceased to serve, he spends more than he ought to do during . . . his service. [A pension is] . . . a perpetual premium for serving negligently and badly. . . . The more murmurs his ill-behaviour gives birth to . . . the more necessary it becomes to get rid of him in order to find a successor that will behave better.³⁴

As a substitute for salaries, he invented the Patriotic Auction,³⁵ whereby those who seek office must bid and pay for it. Other things equal, the highest bidder will be appointed. Bentham liked this scheme so well that it became a standard fixture of his political analyses: the principle of pecuniary competition.³⁶

These letters to Mirabeau are less significant for their novelty, for they introduce few new principles, than for their application of old general principles in specific new ways. Bentham had formulated the principles of utility in psychological and legal contexts; he now applied them to problems of empire, economics, and finance. He now showed, for example, that injustice is thwarted expectation in tax collection as well as private civil law; and virtue is foresight in government expenditure as well as private morals. In 1800 he summed up his new attitude, one that he kept until he died.

Frugality, itself a virtue, is an *auxiliary* to all the other virtues: to none more than *generosity*, to which, by the unthinking, it is so apt to be regarded as an *adversary*. *The sacrifice of the present to the future*, is the common basis of all the virtues: frugality is among the most difficult and perservering exemplifications of that sacrifice.³⁷

Once again Bentham ran from a good thing to a better. He planned seven letters to Mirabeau, and finished only two. For the moment he laid them aside but they had further significance; he returned to them again. By 1795 they had become full-length essays, offered as answers to English problems as well as French. His first letter on the confiscation of remote inheritances became *Supply without Burthen; or Escheat vice Taxation*.³⁸ The letter on the evils and expense of colonial dependencies became *Emancipate Your Colonies!*³⁹ Still another letter on legal costs as the worst of all possible taxes became *A Protest against Law Taxes*.⁴⁰

These letters, like everything Bentham wrote for the National

Assembly, pushed him towards the brink of parliamentary reform. He could after all write authoritatively only about the things he knew first-hand. His examples were necessarily English. Because the French aimed at nothing less than a completely remodelled society – a new concept of sovereignty, a representative legislature, an efficient responsible administration, a new reign of justice in the courts – Bentham's swelling list of examples ultimately covered the whole of English society. And in every new area he found glaring inadequacies. He was at last forced to calculate: how long would the benefits of English government continue to outweigh the rising evils? By 1790 he read the balance on the side of accumulated evil and called for parliamentary reform.

Judges and Juries.

Probably none of Bentham's National Assembly tracts swept him further towards parliamentary reform than those on judges and juries. In December 1789 the National Assembly's committee on law reform issued a *Draught for the Organization of Judicial Establishments*. As soon as Bentham received a copy he put aside the letters of Mirabeau and began a 'perpetual commentary', a point-by-point critique immediately followed by suggestions for improvement.* There was no time to lose. The Assembly members must quickly be shown the shortcomings of the *Draught* before they unwittingly ratified it. And so the machinery of Lord Shelburne's workshop was set in motion for Bentham – all to no purpose, for the Assembly refused to sanction a translation.

Ineffectual as his commentary was in France, it profoundly affected Bentham himself. As he gathered examples and warnings from English law, he realized that he had been treading in a circle, and despaired. He had already made the same critical survey twenty years before, futilely, for the law was worse in 1790 than it had been in 1770. However, he now saw it in a new perspective, no longer isolated for analytic purposes from other institutions but an inseparable part of the whole social structure. How did he arrive at this new perspective and how did it transform his thought?

The French committee's draught was far more radical than

* IV, 285–406, a favourite technique, already used in *A Fragment* and *The Hard-Labour Bill*, and soon to be used again in *Anarchical Fallacies*, a blistering attack on the various French Bills of Rights, II, 489–529.

any of Bentham's own reforms. A bit startled at first, he soon adjusted himself to it. It proposed the popular election of judges, and he remarked:

It is surely a bold experiment this of trusting the people at large with the choice of their judges: the boldest, perhaps, that ever was proposed on the popular side. . . . But now that the committee has given me courage to look the idea in the face, I have little fear of the success.⁴¹

But he condemned the proposal for annual election of judges as inequalitarian, barring the poor from office because they could not afford to sacrifice a salaried job for a one-year appointment. He pleaded for a Napoleonic civil service in which all careers were open to talent.

Now for the first time he became deeply class-conscious, convinced that 'Aristocracy is a vice of the laws. . . . The body of the laws is stained and corrupted and deformed all over by that ugly vice.'⁴² Class structure was created by law and preserved in deformed rigidity by the hypocritical fiction of popular sovereignty. Bentham's division in the class war was Lenin's 'who' and 'whom' rather than the conventional 'have' and 'have not'; for sovereignty, the ultimate political fiction, is the power to command. In his exhaustive analytic way, Bentham had arrived at the Marxian insight that social existence determines consciousness. Nor can Marx's contempt obscure the similarity of their ideas on family autocracy and the origin of religion. Both men agreed that property originated in the family, where wives and children are slaves of the husband; and that religion arose as the institutional form of man's terror before a hostile universe. Once again, as he had done so many years before, Bentham bitterly denounced the standard definition of public office as a trust. He warned the French to avoid the law of England, 'where public trust is private property, and where the people, like other cattle, are passed from hand to hand by succession or by sale.'⁴³ He rose to a crescendo:

It is a bitter office thus perpetually to be upbraiding trustees with being trust-breakers, Englishmen with being Englishmen, and mankind with being men: it is worse than a thankless – when will it cease to be a fruitless one? . . . The English and the French for *plurality*, and *sinecure* and *non-residence* is *fraud* and *monopoly*, and *breach of trust* and *peculation*.⁴⁴

The last chapter of the *Draft* outlined plans for an institution new to French law, trial by jury. It gave Bentham a second wind, driving him on to new heights of eloquent denunciation. He had always felt strongly about juries, their merits and defects both, but had never had a practical reason to consider them exhaustively. Now he let himself go with the same astonishing prodigality that overcame him in Chapter XVII of *The Principles of Morals*. As that chapter expanded into an entire book, *The Limits of Jurisprudence Defined*, so his commentary on trial by jury swelled to hundreds of pages. He described its origins, uses and abuses, the myths spread round it, and possible alternatives. These pages have never been published. But they were not in vain. He summarized and incorporated them in *The Principles of Judicial Procedure*.⁴⁵ A prize example of his subtlety and judiciousness, these pages weigh every argument for as well as against juries. They were decisive in making Bentham a democrat. In a newly won sociological insight he now thought that the trial by jury was the seed-bed of national moral corruption. It poisoned society at the roots and spread poison through every branch. It corrupted the moral sanction by rewarding perjury. Twelve men at random were gathered on a panel to decide the facts of a dispute and released again only after a unanimous verdict. Since few cases were so transparent that all men agreed upon them, some men on any panel inevitably perjured themselves. Moreover, a lawyer in court had two audiences and two stories, a rational factual one for the judge and an irrational emotional one for the jurymen.

Trial by jury corrupted the religious sanction by extracting oaths, and the political sanction by spreading legal hypocrisy and perjury to the Houses of Parliament.

Every relative generates its correlative. Slaves breed tyrants: imposters are bred by dupes, ignorant and prejudiced Judges breed disingenuous, shameless, overbearing advocates, English jurymen breed Old Bailey and Nisi-prius lawyers.

The disease sinks deeper, and poisons the vitals of government. The Bar is a chief nursery for the House. The Morals of the Bar become the morals of the House. Learn manly virtue at the Bar, learn female at Drury Lane.

It is from that perennial fountain of moral contagion that the corruption of party becomes worse corrupted. The orators on both sides argue as if from a brief: and the House divides itself into Counsel

for the Plaintiff and Counsel for the Defendant. It is the turn up of a card that decides to whose lot it shall fall to descant upon the virtues of economy or the necessity of defence: upon the tyranny of finance or the exigencies of the revenue. . . .

It is become a maxim of the House that no laws are to be listened to . . . that have not the support of those . . . whose interest it is that they should for ever remain in as bad a state as possible. Nothing touching the prerogative that does not come sanctioned by the Minister: nothing relative to Religion that is not approved by the Clergy: nothing relative to private law or the administration of justice that has not the support of lawyers. The maxim as far as it goes commands admiration. One addition is wanting: nothing relative to the police that has not been planned at the Council Board in Newgate. The abuses of government are a patrimony which the triumvirate concur in sharing out . . . in partnership with the utmost harmony.

The institution of Juries stands chargeable with some collateral inconveniences which for not being directly felt are not the less serious.

It exerts a corruptive influence over the public understanding and the public morals . . . by turning the temple of Justice into a school of perjury to which the middling class of people are sent by rotation [and by] . . . the tendency it has to foment among [them] . . . whatever prejudices are most inimical to reason and justice, by the instrumentality of mercenary advocates. Hence a double injury from one source: that to the intellectual character of the seduced and that to the moral character of the seducer. No distinction better known in Westminster Hall nor more frequently alluded to than that between an argument to a Judge and an argument to a jury. The recipes for poisoning juries are as well known as the recipes for poisoning rats and almost as infallible. . . . It is held infamous among men of professed gallantry to boast even among one another of the wives or virgins they have ruined: but what theme so favourite among English lawyers as the history of the Juries they have seduced?⁴⁶

No jury could escape immorality. If the members obeyed the law or the judge's instructions, they sacrificed their self-interest, a proper part of morality. English law was class law, made by and for the ruling aristocracy. Obedient jurymen therefore became mindless slaves, permitting perversion of their will and understanding both. Blackstone had praised juries for their 'impartiality', as indispensable democratic checks to the growth of aristocratic power. Bentham was sceptical. If juries were really impartial, he said, the effect:

would be exactly the reverse: impartiality is but a modification of integrity, probity . . . uprightness: the more upright the tribunal, the stricter, the more punctual the execution of the laws, the more firmly the chains of aristocratical or any other tyranny would in consequence be rivetted to them. . . . Aristocracy [is] a broad-bottomed despotism.⁴⁷

On the other hand, if a jury reached an independent verdict, it illegitimately usurped the judge's role. In theory he alone decided questions of law; the jury, only questions of fact. In an independent verdict, the jury decided both questions and covered its usurpation with fictions.

The system sinned against security as well as morals. It could settle no grounds of expectation. Chance brought twelve men together; if some among them were courageous and intelligent enough to reach an independent decision, that too was pure chance.

The influence of juries is uncertain, un conjecturable, feeble, broken, discordant: it is the stability of a house divided against itself. It is different in different places: you can never be sure of it two days together. He who is saved by one Jury may be sacrificed by another: the hero of today may be the victim of tomorrow.⁴⁸

Far too often, Bentham feared, juries were obsequious, passive, and unthinking.

People don't think of the defects of this institution because they don't think of the defects of any – In Religion they pin their faith on the sleeve of the Church – in Law upon that of the Lawyer – the men they trust to in every line are those whose interest it is to deceive them.⁴⁹

It cannot be surprising that Bentham warned the French to have as little to do with trial by jury as possible. He asked them to see juries in proper perspective. Historically, he conceded, they had arisen to serve a good purpose, as checks on the behaviour of judges. But a far simpler and more effective way to ensure good behaviour was through popular election, and this the French had already provided for. He told them:

The question is not between a Jury and an unaccountable Judge: but

betwixt twelve unaccountable men, as Jurymen always must be, and one man strictly and perfectly accountable.⁵⁰

Bentham's ideal of legal procedure was then and always Henry VIII's Court of Star Chamber – with the indispensable addition of judicial responsibility.

The end of procedure is the conviction of the guilty. . . . The Jury trial is a bad means to the end of procedure. The Star-Chamber trial was a good one. A better can not be devised. . . . Three things only were wanting to make the Star-Chamber a good court – unity, subjection to the people, and good Laws to execute.⁵¹

Bentham's approval followed from the dynamics of the logic of the will, where one measure of value was the speed of translation from command to obedience. The more functionaries and rituals cluttering the road between thought and action, the more diffused and irresponsible commands became. Eventually Bentham elevated his procedural ideal to a Principle of Single-seated Responsibility.

Meanwhile he compromised. If the French were determined to have a jury system, he did not choose to hinder them. The people are sovereign. If they dislike a law they will not obey it.

I like it: but do the people like it – that is the question. No law can be good that is not approved by the people. Were it in itself the perfection of wisdom the want of this single extraneous condition is enough to destroy every good effect of its extrinsic excellence.⁵²

What was good for France was one thing; what was good for England was another. With all its defects, was the jury system good on the whole for England? 'Good?' Bentham asked:

it is indispensable. Why? For the very same reason why it would be bad and mischievous in France. It is good – for what? To make anarchy, to turn the laws into waste paper, to discount the plans of Judges, to enfeeble the power of those who if left to themselves would destroy the country, change the mixture of anarchy and tyranny into pure anarchy, and turn our constitution into a bad one.⁵³

For generations praise of juries had belonged among the incantations to 'English liberties'. Whigs and Tories alike re-

peated the pious platitude that juries were the democratic element of the judiciary. In 1791 Erskine expressed the popular sentiment in an address to the House of Commons:

He considered the jury as the commons' house of the judicial system – the balance for the people against prerogatives which it was necessary to trust with the Crown and its magistrates, but which would often when unbalanced degenerate into oppression.⁵⁴

For once Bentham found substance in rhetoric, and agreed tersely, 'In a word, to undo what the legislators and lawyers have done, is the great use of juries.'⁵⁵

What terrible plagues had legislators and lawyers visited upon English society, that so strong a poison as juries should have become a necessary remedy? With growing alarm and fury, Bentham examined the whole body of English law again, and found it rotten as never before.

Since in the present undigested and unprincipled state of the penal law these enervating poisons have their use, in what respect have they . . . the effect of wholesome medicine? I will give a specimen of these. . . .

1. The law against offences even of the highest and most real malignity, in so far as they are made punishable with death.

2. All laws which put the attempt to commit a crime of real malignity although desisted from and perhaps repented of, upon the same footing with the actual perpetration.

3. Laws which put Homicide by consent such as Duelling and Suicide or homicide with intention of hurting and not of killing, or intentional homicide on sudden quarrel on the same footing with premeditated assassination.

4. The penal laws against the irregularities of the venereal appetite, unaccompanied with any breach of contract, fraud or force: laws supported perhaps by the false and frivolous pretence of a detriment to population, but in reality enacted under the influence of asceticism, and for gratification of the malignant passion of antipathy.

5. All laws against the imaginary sin of usury.

6. All laws converting the country into a prison and punishing the skill and ingenuity of the poor workman with confinement in support of the monopoly of the merchant and master-manufacturer [and] . . . of their malignant hostility against foreign nations under the mask of patriotism.

7. All laws . . . by which, under pretence of conspiracy the price

of labour, the sole patrimony of the bulk of the people is prevented from rising to its natural level, while the rich masters are left at full liberty to conspire to beat it down – whose wealth without any law would enable them to starve their antagonists into compliance.

8. All laws adverse to religious liberty: that is all laws which put people of any one way of thinking in matters of religion upon any better footing than people of any other.

9. But above all, all laws adverse to . . . the liberty of the press: all laws and penal customs screening the conduct of public men from the tribunal of the public, and screening the servants of the people from the censure of their master.⁵⁶

This is a very significant catalogue, no mere list of laws but an indictment of an entire social system: the vengeful and stupid morality that supported so barbarous a criminal law; the economic ignorance and tyranny that made a mockery of 'English liberties' for masses of oppressed working men; the political control of speaking and writing that destroyed the strongest guarantee of popular freedom.

The lessons of the Revolution are written in it. Before 1790 Bentham had been only abstractly aware of social classes; after 1790 class structure and the tyranny of the rich over the poor became a real, inescapable, and menacing fact. Before 1790 he had supposed that English government was on the whole a good government, its tendency to corruption, anarchy, and despotism held in check by popular criticism. After 1790 government began to limit freedom of speech.

According to constitutional convention, juries were the same outposts of democracy as a free press, standing guard against invasion by monarchy and aristocracy. With freedom of the press threatened, with obedient juries the creatures of aristocracy and independent ones eager to fight for popular freedoms rare and unpredictable, Bentham made a new political calculation. Did the benefits of English government still outweigh the defects? No, they did not.

Were such feeble *ex post facto* correctives of bad law as juries necessary? If fiction became fact, if parliamentary representation became truly responsible trusteeship, they would no longer serve a purpose, for popular interests would be safeguarded at the source of law.

How, then, could fiction become fact? Only by democratic parliamentary reform. Bentham was far too shrewd a judge of

English prejudice to rest his case on American and French examples. He offered Englishmen a chapter of their own history – the origin of juries. In the beginning, before legislative functions had separated from judicial, he explained, juries had been a kind of direct democracy.

When was it that the passion for Juries took its rise? At the time when Judges were not only the creatures of the Crown, as now, but the Absolute slaves of the Crown, being removeable at pleasure. Reasons dwindle or die: or vanish altogether: but the popular affections that were grounded in them take root in habit and prejudice and live forever. Everything done in aid of the probity of Judges has been so much struck off from the relative utility of Juries. William 3d made them independent of the King on the throne: George the 3d made them independent of the heir apparent. What William or what George will change this nominal independence [into] . . . perfect and legitimate dependence on the people?⁵⁷

In judicature, as in legislature, what the people are *not* fit for is to act in person: in judicature, as in legislature, what the people *are* fit for, is to act by proxy. . . .

In general legislature it never was possible for them to act at all. Therefore accordingly till the invention of calling upon them to act by proxy, they never did or could take any such share. In judicature the possibility existed from the first: even when society was in its rudest state: and happily at a very early period chance or design put this share of government in the hands of the people of this island.

It was the happier, because the less advanced the stage of society the greater the importance of judicature, as having the more in it of legislation. In the rudest stage judicature stood altogether in place of legislature. At that period therefore trial by jury preserved to the people something very like a share in legislature. By this negative on the one, they possessed and exercised in detail a negative on the other. . . .⁵⁸

Ironically, the same conventional Englishman who praised the jury system stubbornly refused to consider parliamentary reform. Yet even the most radical advocates of universal suffrage demanded no more for the people than a proxy vote. Bentham began to see the absurdity of the English anti-democrat position.

Where the people act by proxy, the ignorance of by far the greater number is no disadvantage to them: their opinion is the opinion of

such as are or at least as pass for the most intelligent among them. Of those who have understanding to be sensible for their own unfitness, and they are by far the greater number, each has his own oracle upon whose sleeve he pins his faith. It is therefore no more than may reasonably be expected of them, that in general they should not choose a bad judge nor turn off a good one.

This resource fails them altogether when they come to act in person and that in the way of judicature. Each man's judgment must now be his own: no man has his oracle at his elbow. Strangers as they all are to one another, so many of them as are conscious of their own insufficiency are obliged to choose at a venture their oracle on the spot. That oracle is naturally the most hasty, the most violent and the most obstinate: for as to proofs of ability and intelligence he has no time to give them.⁵⁹

He continued:

Of the [intellectual] inferiority of Juries . . . there can be but one opinion, and this disadvantage too is an incurable one. The question of law they may ease themselves of, if they know how, and think proper. But they will not always know how, and they may not think proper . . . but . . . of the question of fact they never can rid themselves: it belongs to them constantly and exclusively. But to pursue the question of fact through a long channel of intricate and clashing evidence requires in a cause of nicety something beyond the ordinary measurement of talent, and at any rate a practised and cultivated mind. If by great accident you get a Juror equal to the task, what are you the better? He is but one out of twelve.⁶⁰

The jury system presupposes a much higher level of popular intelligence than the average man possesses. Political democracy presupposes only that the average man is probably self-interested and will therefore be attentive to wiser men who can show him where his true interests lie. To Bentham this was simple common sense and altogether conclusive. He now became a full-fledged radical English democrat.

CHAPTER 9

1 X, 197.

2 A. M. 33541, 70.

3 Alexis de Tocqueville, *The Old Regime and the French Revolution* (New York: Anchor Books, Doubleday & Co., 1955), p. 13.

4 Samuel Romilly, *The Life of Sir Samuel Romilly* (London, 1815), I, 408.

5 A. M. 33530, 397-9.

6 A. M. 33553, 31, 'History of the Intercourse, etc'.

7 A. M. 33530, 397-9.

8 B. 132, 381ff.

9 *Ibid.*

10 *Ibid.*

11 W. W. Rostow, *British Economy of the Nineteenth Century* (Oxford: The Clarendon Press, 1948), p. 36.

12 Stark, I, 194.

13 I, 154, 1789.

14 III, 219, 1831. 15 II, 287, 1820.

16 B. 87, 119; see also *The Theory of Legislation*, *op. cit.*, pp. 464-5.

17 IV, 338.

18 B. 44, 2, 1795.

19 X, 72-3. 20 II, 260. 21 IV, 363, 1790.

22 B. 25, 120, *ca.* 1789.

23 X, 282. 24 II, 299-373.

25 B. 169, 165-6.

26 B. 169, 165-6. See Chapter 3, pp. 104ff. above.

27 B. 170, 180, 'Constitutional Law', 1788.

28 Halévy, *La Formation*, I, pp. 425ff., my translation.

29 B. 170, 3, my translation, no date, probably 1789.

30 B. 9, 39.

31 *Ibid.*

32 *Ibid.*

33 II, 245.

34 B. 9, 42.

35 IV, 372ff.

36 IX, 286ff., *Constitutional Code*.

37 III, 145, note.

38 Stark, I, 279-367, 1795.

39 IV, 407-18, 1793. 40 II, 573-83, 1793.

41 IV, 309.

42 B. 35, 67ff., 1790.

43 IV, 367.

44 *Ibid.*, 379-80.

45 II, 119ff.

46 B. 35, 93ff., 1790.

47 *Ibid.*, 78, 82.

48 *Ibid.*, 6.

49 *Ibid.*, 2.

50 *Ibid.*, 59.

51 *Ibid.*, 4.

52 B. 146, 13.

53 *Ibid.*, 2.

54 Holdsworth, *op. cit.*, X, 604.

55 IX, 554.

56 B. 35, 11-12.

57 *Ibid.*, 17.

58 *Ibid.*, 5.

59 *Ibid.*

60 *Ibid.*, 38.

Conclusion:

Learning, Knowing, Doing

1790-1792

The Threads of English Democracy.

The French Revolution was decisive in making Bentham a democrat. It gave him at last a practical reason to inspect the entire structure of English government and society. To meet the French challenge he continually asked what was good and what was bad in English institutions. How had they arisen and grown? What were their original purposes and how far had they been diverted from them? How did they intermesh and interact? How great was the difference between fiction and fact, between popular eulogies and brutal practice? Bentham no longer approached them one by one, but for the first time studied them sociologically as parts of a unified whole.

The French constitutional and judicial drafts challenged Bentham in the same way that Lord Shelburne had: they opened unimagined horizons and forced him to look at old issues in new ways. The French legislators wanted to create a jury system. Very well. But what had been the long-range effect of juries in England? Were they not schools of moral corruption? And who created and spread this immorality but the politically powerful aristocracy? Was it realistic to consider the physical, religious, political, and moral sanctions separately as he had formerly done? Bentham had to admit that 'Power, in all and every shape, is the sole instrument of morality.'¹

This insight struck him even more forcibly when he considered the French proposals for electing judges. The French wanted to make their judges dependent on the people: how did matters stand in England? There men boasted endlessly of the independence of judges as a guarantee of 'English liberties'. This was rhetoric; the facts were otherwise. The fiction of judicial

independence was an old subject for Bentham. But as he took it up again in 1790 he became aware as never before of the interlocking patterns of power among the different branches of English government.

Look at the Lord Chancellor, he demanded. Did he not control more secret and irresponsible power than anyone else in the kingdom? He himself was entirely too independent, but hundreds of placemen, inferior judges and clergymen were directly or indirectly in his power, and what then became of their independence? Bentham said:

But it is to the Chancery-bench you must look if you would behold a monster, in comparison of which the Chimera of the poets was an ordinary beast, their triple-bodied Geryon an ordinary man. . . .²

As the nation's highest legal officer, the Lord Chancellor controlled the destinies of the twelve judges of the three civil courts; he was a member of the Cabinet, the King's chief legal adviser, head of the House of Lords, and proprietor of a great mass of ecclesiastical and legal patronage. 'All these discordant bodies you see enclosed in one robe,' Bentham continued, 'that every one may corrupt another.'³

The office of Lord-Chancellor made nonsense not only of judicial independence but of other hoary constitutional fictions as well: the doctrine of the division and balance of powers, and legislative power as a popular trust. Again this was an old story that Bentham now re-told in a more comprehensive sociological way. Not only did the Lord Chancellor combine judicial and administrative powers, but he and his fellow judges forced their wills upon members of Parliament. Should a bill before the House displease the judges, Bentham said, 'down drops the proposition dead-born'.⁴

Bentham was pleased that the French did not succumb to some of the most flagrant absurdities of the balance of power theory. They refused to set up a second chamber and denied legislative power to the King, thereby arranging that the legislature alone should legislate. They were not under the British delusion that a triple division of legislative power between King, Lords, and Commons somehow resulted in better statute law. But he suspected that the reductive doctrine lingered on in their proposals for subordinate legislatures, and quickly warned them against it. At the same time he asked, if constitutional liberty is

not the balance of powers, what then is it? He found his answer characteristically in another fiction of constitutional law, popular dependence, that English politicians affected to honour and the French intended to practice. He then laid down a set of propositions on the nature of political liberty and re-inspected the whole vocabulary of constitutional law.

What is political dependence? Independence? Supreme and subordinate power? Judicial, legislative, and administrative power? Who should exercise various powers and how can their responsibility be secured? Bentham gave his answers in an interesting unpublished essay, 'On the Efficient Cause and Measure of Constitutional Liberty'.* He revived Blackstone's distinction between inclination, knowledge and power, and tried to show that without proper inclination, a sincere commitment to the greatest happiness of the greatest number, a legislator with knowledge and power may well be a social menace.

Bentham's approach to problems followed a standard pattern. Set in motion by specific abuses, he was first of all a Censor, indicating the evil. Then he became an Expositor, analysing some of the possible remedies and showing the eligible ones. Finally, no more urgent business distracted him, he continued his analyses until all the possibilities were exhausted. Invariably he was side-tracked before they were finished. And so it happened again with his writings on the French Revolution. His first essays were designed to serve specific purposes: the *Political Tactics* to teach inexperienced members of the National Assembly a step-by-step procedure for conducting public debates, the *Letters to Mirabeau* to answer concrete questions of finance. When he read the French drafts, he at once listed their flaws, then offered better alternatives, and finally outlined a complete analytic treatise, *Constitutional Law*, with a full set of articles attached. Only fragments survive, but they are fundamental to the development of his political thought. In them he wove the final thread in his fabric of parliamentary reform: 'influence'.

He began with an analysis of kinds of power. The conventional division of power as executive, judicial and legislative was a bad one, incomplete and middle-level. Proper divisions must be bifurcate and exhaustive. Power is therefore either

* Printed below, Appendix E.

supreme or subordinate. It is a key term of the logic of the will. Whose will is first and ultimate in a society? Through what hierarchy does it pass before it is translated into action? Supreme power is divisible into creative (or constitutive or original) and active; active, into legislative and executive; executive, into judicial and administrative. Bentham well knew that this was only one of many possible ways to define power; he might also have escaped conventional phraseology by speaking of active power as direct and indirect. What then, he asked, is indirect power and how does it operate in England? And so he was once again side-tracked, turning from an abstract treatise on constitutional law for the French to the uses and abuses of indirect power by the English.

What disguise did indirect power usually take? It functioned as 'influence' – that chronic bane of opposition, all the more intense after 1760, when George III toppled the Newcastle Whigs from power as undisputed arbiters of place and patronage. As the average Englishman understood it, influence was a uniquely English phenomenon. It referred not to royal power in general, but to rewards the Crown could offer to maintain a parliamentary majority.⁵ Its use was a respected constitutional tradition. Almost everyone agreed that government could not get along without it. As Hume had written in 1741:

The Crown has so many offices at its disposal, that . . . it will always command the resolution of the whole. . . . We may, therefore, give to this influence what name we please; we may call it by the invidious appellation of *corruption* and *dependence*; but some degree and some kind of it are inseparable from the very nature of the constitution, and necessary to the preservation of mixed government.⁶

All the same, there was opposition to influence. It reached a peak in 1780 with Dunning's famous resolution, 'That the influence of the Crown has increased, is increasing, and ought to be diminished.' Significantly, Dunning demanded reduction only, not abolition.

Bentham was more radical. By 1790, spurred on by the bold French legislative experiments, he wanted to abolish it in the conventional sense altogether. The history of his study of influence is a freak of his intellectual development. He had never really considered it before, though he had been defining and re-

defining the vocabulary of constitutional law since 1769, when Helvétius first persuaded him that political science urgently needed a lexicographer. Power, rights, obligation, duty, sovereignty: these were stock-in-trades. But influence had somehow escaped him.

To be sure, Bentham had in his usual style occasionally touched on branches of influence – sinecures, pensions and places – but only in passing, as specific evils with specific remedies. Around 1776 he suggested a subject for a prize essay, ‘On the best method of reducing the burthen upon the Nation from sinecures and unnecessary offices, consistently with a due attention to the rights of the present patrons and possessors.’⁷ In 1790, however, he understood at last that influence was an arm of power and potentially a very dangerous one. For the first time he tried to analyse it exhaustively, and planned a major new work, *Influence*.*

What did Bentham mean by influence? It was ‘the result produced by power applied indirectly and to a purpose collateral to the end of its institution’. This definition was more abstract than the conventional eighteenth-century one, but Bentham agreed with everyone that government could not function without it. Influence could be used for good and necessary purposes as well as bad ones. What distinguished the good from the bad followed from Bentham’s long-standing dualism of understanding and will. When a man in a superior position of power forces his will upon the wills of subordinates, he traps them into defying their interests and understandings. Influence is legitimate or illegitimate. When men’s wills and understandings are in harmony and they act accordingly, whatever influence has been used on them is legitimate. When their understanding is closed off or perverted, they are victims of ‘corrupt’ or ‘sinister’ influence.

How did influence turn the balance against the utility of English government? According to Bentham, the vast secret operations of illegitimate influence vitiated the constitutional fiction that political power is a popular trust. Through the all-pervasive system of sinecures and places, public office had become private property, privilege without responsibility.

* See Appendix F below for the remaining fragments, ‘On the Influence of the Administrative Power over the Legislative.’

Fiction must become fact: political power must once again be held in trust; the people must be sovereign.

Bentham's cry for popular sovereignty was again not new. He had always assumed it. But he had also assumed that it could be guaranteed through the moral sanction as well as the political. The will of the people could make itself heard through morally responsible Utilitarian statesmen and the extra-governmental freedoms of speech, assembly, and press. Bentham had hoped against hope that these freedoms were strong enough to substitute for parliamentary reform. If the voice of the people was heard and obeyed, what difference did it make who spoke for them? By 1790 Bentham knew he had been wrong. Free communication seemed to be another constitutional myth. Through the irresistible power of the administration and its chief prosecutor, the Attorney-General, it was every day becoming more circumscribed, for the:

most conspicuous, and not the least active of his functions is pure unmixed mischief . . . destroying . . . by efforts as impotent to every public purpose as they are distressful to individuals, the *liberty of the press*: contributing what depends upon him towards smothering the public voice, and setting the trustees above the people, above the controul and censure of their principals. . . .⁸

Bentham saw no alternative. He therefore gathered all his threads of dissatisfaction and wove them into a new pattern of government: democratic parliamentary reform. In 1790 he began a large new work, *Parliamentary Reform*, that called for:

a change in the forms and modes of proceeding of the National Representation of Great Britain.

Every man who proposes a change . . . of any part of the law may be expected to produce his reasons. The reasons . . . I here submit . . . consist in the inconveniencies of the present system. . . .

The British Constitution, though good in comparison of absolute monarchy or absolute aristocracy, is perhaps equally bad in comparison of a well-organized commonwealth.*

He pleaded for overthrow of property qualifications as a measure of voting eligibility, equal voting rights, frequent elections, and the secret ballot. These remarkable pages are less a

* For the fragments that survive, see Appendix G below.

coherent essay than a lawyer's brief, a series of questions and answers that try to forestall conceivable objections. Rough as they are, they anticipate everything in the 1817 *Plan of Parliamentary Reform*.⁹ Bentham was not converted to democracy by James Mill in 1809; he was led to it naturally and inevitably by the overwhelming force of Utilitarian reasons in 1790. His entire experience of learning, knowing, and doing combined to make him a democrat.

The unending and increasing tension between justice and loyalty that marked Bentham's entire intellectual history began with *Telemachus*. There at the age of seven he discovered what good government ought to be. But day after day, year after year, he learned that what is, is not what ought to be. Though he had no direct experience with government, the institutions it sanctioned seemed to him irrational, cruel, and barbarous. Dr Johnson's orthodox piety, Mrs Phillips' legal torments and bankruptcy, the mechanical education, snobbery, and enforced subscription to the Thirty-nine Articles at Westminster or Oxford, the chaos, terrible uncertainty, vindictiveness, inequality, expense, perjury, and moral corruption of English law as he saw it practised in the Court of King's Bench – all drove a brutal lesson home: the gap between *is* and *ought* was wide and ever-widening.

It was Bentham's mission to close the gap by designing and building an over-arching bridge of Utilitarianism. On every level – descriptive, middle-level, and normative – it was implicitly equalitarian and democratic. This all-encompassing art-and-science of morals and legislation began on the lowest empirical level with the atomic facts of human nature, pleasures and pains, positive and negative responses to action. It began on the highest level with a passionate commitment by sovereign directors of human action to the greatest happiness of the greatest number. How can a sovereign estimate the value of private responses? He cannot know; he can at best make educated guesses, based on the assumptions that the value of pleasures and pains is the same for everyone, that all men have an equal capacity for happiness, and that each man counts for one in the social scale.

Analytically, Utilitarianism began with a dictionary of the vocabulary of morals and politics and moved up through a hierarchy of propositions that together formed a logic of the will to the ultimate greatest happiness principle with its four sub-

ordinate ends of good government – subsistence, abundance, security, and equality. Bentham's definitions of will and understanding and the due relation between them, of power as punishment and reward, of sovereignty and its popular responsibility, were based on democratic and equalitarian value judgments. The propositions in the logic of the will, that it is a class logic, that the fundamental measurement of the calculus is extent or the orders of evil, that the inequality-minimizing principle demands proportionate taxation and high wages, were also based on the same assumptions.

They were implicit as well in indirect legislation or social therapeutics, not only in Bentham's equalitarian programmes of social welfare but in his exaggerated reliance on the moral sanction to guarantee good government through free speech and a free press. Finally he made the fateful discovery that institutions shape men, renounced his earlier individualism, became a sociologist, and described the tyranny of the English aristocracy.

As knowing without doing is worthless, the value of Utilitarianism must be measured in use. If Bentham was always a democrat in theory, he was not so in practice. Because the most rapid and efficient way to apply the greatest happiness principle was through sovereign power, he wrote at first for legislators. Gradually, his failures to find an audience, his brother Sam's disappointments with the Navy Board, Lord Shelburne's guidance through the maze of party politics, empire, and foreign policy, taught him that his chosen leaders would not lead. They rejected their popular trust. At the same time, Bentham's experience of progressive government widened to include American, Russian, and Genevan examples. He saw as well that he had nothing to fear from the people; they were becoming every year more civilized.

Finally, the French Revolution offered him a unique opportunity to review the entire pattern of the possible and the established, what ought to be and what is, and his view of the eligible changed. If English legislators refused to close the gap, the common man must do it himself. Bentham therefore called for parliamentary reform.

It was fitting that his thought should end as it began, in his dissatisfaction with English law. As the principle of security, the doctrine of motives, and the calculus were his responses to the

law's uncertainty, primitive psychology, and aristocratic monopoly of wealth and power, so he became a practising English democrat after an exhaustive study of juries.

Because Bentham's thought began with atomic pleasures and pains and moved up step by step through ever greater hierarchies of command and obedience until it reached sovereignty, the crucial question of Utilitarianism was: who shall be sovereign? He answered, the people in fact as well as in name. The climactic change in his thought, therefore, was his conversion to democracy in 1790.

A Fabian Retreat.

Bentham had no sooner woven this vast fabric of reform than it began to unravel. With almost monotonous regularity his best ideas misfired because they were mistimed. Just as he reached an early peak of radical political opinion, it began to be dangerous to speak out. After the French declaration of war in February 1793 the English constitution seemed sacrosanct, and any criticism of Government an act of treason. In 1791 Burke split with Charles Fox in a painful scene in the House of Commons. It was a signal for men of all shades of opinion to rally behind the Crown and the *status quo*. In 1792 the Duke of Portland broke from the Whigs and led his followers to support Pitt's Ministry. In the same year Government issued a first proclamation against 'criminal and seditious writing', followed by the prohibitive Acts of 1795, 1798, and 1799. Using indirect powers it had formerly avoided, the administration now encouraged secret informations, set up 'special juries' that usually were prejudiced against defendants, and took its own time to set trial dates after accusations.

Bentham did well to be silent. He would have agreed with G. K. Chesterton that 'A man must be orthodox upon most things, or he will never even have time to preach his own heresy.' Of course he was an eternal reformer and never stopped planning improvements. But, for a time, he put his larger ambitions aside and settled for the possible. If parliamentary reform was visionary, a Panopticon was practicable. After 1791, when his Panopticon plans were published, he began to gather official support for his project and became passionately absorbed in architectural drawings and land leases.

Bentham was Fabian and could wait for the right moment

patiently. If the fabric of his early radicalism was torn as soon as he wove it, he knew that he could 'at pleasure take up the thread and spin it on wherever it is broken'. As the Napoleonic Wars drew to an end and the political atmosphere relaxed, he took up the threads again. In 1809 he began exactly where he had stopped in 1790, with an analysis of influence. He wrote two large and still unpublished works, *Sinecures* and *Influence*.*

One curious fact about this reinvestigation of influence is that Bentham forgot he had considered it before. In 1820 he described his innocence in 1790:

for in those days, such was my simplicity, not having yet discovered the distinction between influence of understanding on understanding, and influence of will on will, – the nature and effects of corruptive influence on the representatives of a people, were unknown to me.¹⁰

He also forgot that he had written *Parliamentary Reform*. On top of a two-page outline of it, probably written in 1790, he later scrawled, 'What can this be? Surely this was never *my* opinion.' It is the succession of these memory lapses taken at face value that has made his conversion to democracy by James Mill in 1809 a stock tradition of the history of ideas.

Why did Bentham's memory fail him? There was nothing mysterious or devious about it. It was part carelessness and part self-dramatization. In his old age he drew a portrait of himself as a gloomy orthodox boy who slowly blossomed into a gaily radical patriarch. Those parts of the picture that did not fit he easily forgot. Eager to persuade men to look at old and new things in new ways, he offered his own history as a model example. Look at the average man, he suggested. After an adolescent fit of rebellion, he becomes mired in conservative opinions that he never questions again. Then look at me, he continued. I was sixty before I stared the radical doctrine of political democracy straight in the face, and I am so much the happier for it. The popular moralist or deontologist in him was at work. He wanted to show the practical moral consequences of good political opinions.

But Bentham's picture of himself was essentially a true one. In March 1792 another chapter of his life closed. Old Jeremiah Bentham died at the age of seventy-nine, happy, mellow, and

* An account of them will be given in Volume Two.

proud of his sons. Jeremy and Sam shared a large inheritance more or less equally. Sam received a larger amount of cash and negotiable securities, and Jeremy took over many farm leases and the odd family home in a *cul-de-sac* at Queen Square Place. They moved into the house at once, the better to plan operations for Panopticon together.

Above all, Bentham now had financial freedom he had never known before. Forced to lead an orderly frugal life, he had become accustomed to it, but his new wealth was exhilarating. At last he had enough money to underwrite any modest reforms he chose. Panopticon was only the first of his many private enterprises, and his inheritance helped to make the second half of his life a happy adventure. It aided in transforming an old man into a boy.

As he stood by his father's death-bed, perhaps Bentham wondered if the venerable old man knew how completely his eldest son had rejected all the orthodox beliefs he had been taught as a child. Bentham had come a long way since 1761, when he struggled to suppress shouts of admiration as the young George III rode by, to the violently anti-monarchical *Letters of Anti-Machiavel* and his new designs to abolish every scrap of illegitimate influence. He had fed on sentiment for breakfast as a child and been the model of sober orthodoxy his father had wanted him to be. But he had been feeding on facts for over thirty years, learning that what was said and done were often different things, and drawing the conclusion that the established was no longer eligible.

Old Jeremiah Bentham, however, had been learning too. 'Jerry,' he finally gasped, 'you have made a philosopher of me.'¹¹ Where he least expected it, Bentham had made a convert to Utilitarianism. It was a bitter-sweet ending.

CONCLUSION

1 Baumgardt, *op. cit.*, 504.

2 IV, 381.

3 *Ibid.*

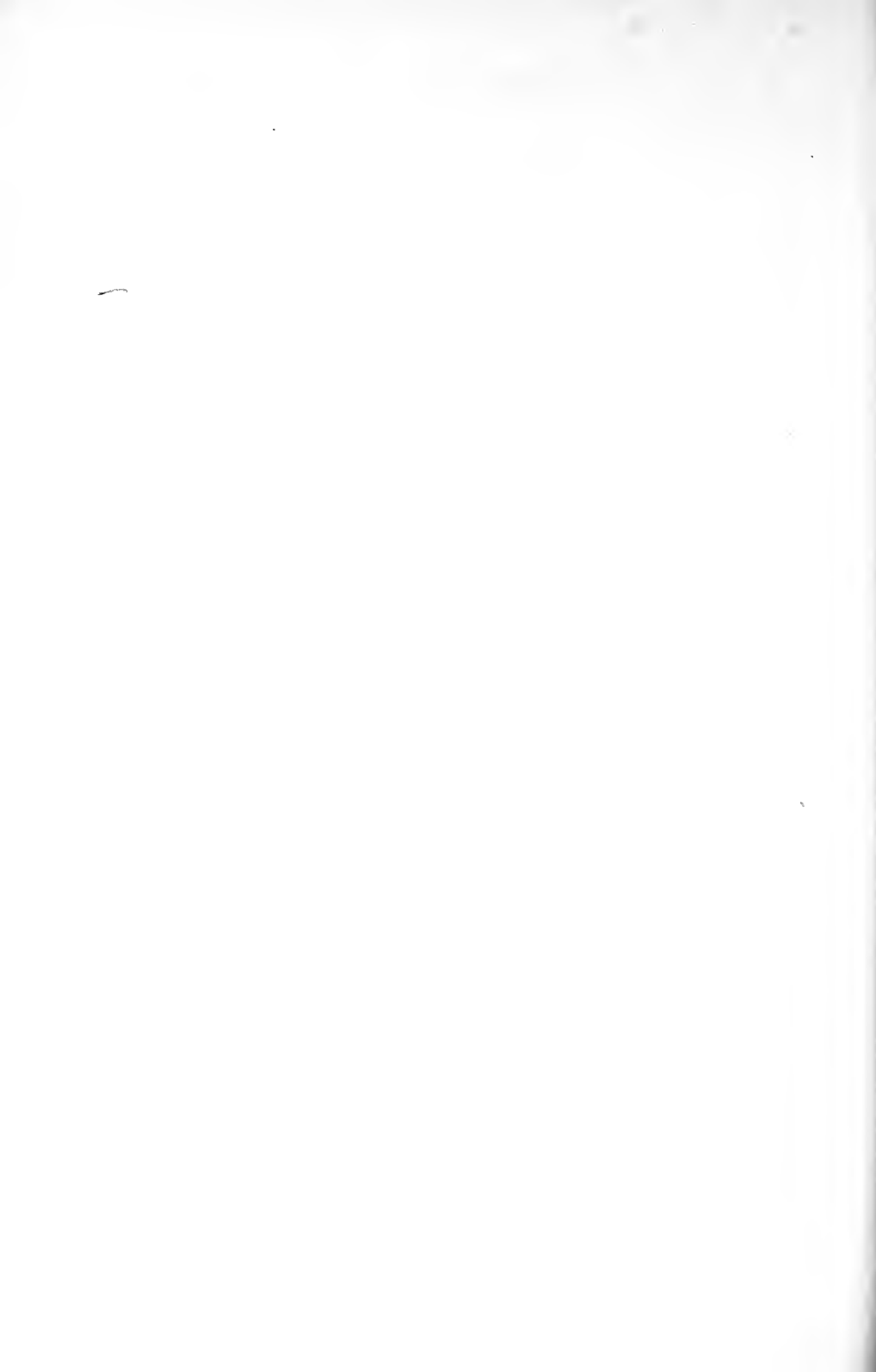
4 VI, 207.

5 E. T. Williams, 'The Cabinet in the Eighteenth Century', ed. Schuyler and Ausubel, *The Making of English History, op. cit.*, p. 390, note.

6 Quoted in A. S. Foord's important article, 'The Waning of the Influence of the Crown', *Ibid.*, 401ff.

7 X, 76. 8 IV, 405. 9 III, 434-557. 10 X, 515.

11 Neal, *Wandering Recollections, op. cit.*, p. 308.



APPENDIX B

On Logic and Grammar as Applied to Legislation

A. M. 33549, pp. 16-17, 1823

Of the branches into which the art and science of logic may be considered as divisible, one is, that which has for its object [a determinate set of words] . . . say, for shortness, *avoidance of uncertainty*.

Of the whole field of art and science, that portion [of highest] . . . importance . . . is, manifestly, that part which belongs to the department of morals; more particularly, that part which belongs to the sub-department of government, including Legislation.

Of every instance of uncertainty on the part of the rule of action, expressive of the will of the constituted authorities in the state, one effect is – a correspondent degree of insecurity and sense of insecurity. Insecurity is a chance, more or less considerable, of being afflicted with the correspondent actual evil: this evil is different according to the nature of the branch of law, in which the seat of the correspondent vice resides. If the insecurity is that which affects property, the correspondent actual evil is, loss of property: and, in the mind of him by whom the loss is sustained, pain of privation, or say pain of disappointment: pain of privation, produced by reflection on the loss sustained: pain of disappointment, produced by the succession of that same pain to the correspondent pleasures of possession or expectation, as the case may be.

Uncertainty, in the case where it has for its seat the political rule of action, is at its maximum in the case where that same rule . . . has no determinate set of words belonging to it. In this state is the rule of action throughout all . . . that spurious and imaginary substitute to law . . . *unwritten law, common law, or jurisprudential law*. . . . In this case . . . the rule of action by which the fate . . . of the parties litigant is determined, is the arbitrary will of the judge, made known, on that occasion, for the first time.

APPENDIX C

Logical Arrangements, or Instruments of Invention and Discovery

[An abridgment of perhaps the most important statement of Bentham's principles. For the complete text, see III, 285-95.]

Logical arrangements, which have served as so many *nova organa*, or instruments of invention or discovery to Jeremy Bentham, in the composition of his several works. . . .

I. Division of entities into real and fictitious; or say, division of nouns-substantive into names of real entities, and names of fictitious entities . . .

By attention to this distinction . . . I was enabled to discover . . . a numerous class of words [incapable] . . . of being expounded by a definition in the ordinary form, viz. the form *per genus et differentiam* . . . and at the same time to bring to view the only instructive and useful exposition of which the words of this class are susceptible, viz. the exposition by *paraphrasis*. . . .

II. Division of entities, real and fictitious together, into physical and psychical. . . .

III. Relations between the import of the word *happiness*, and that of the words *pleasure* and *pain*. . . . Determinate import thereby given to the word *utility*. . . . An action may be considered and spoken of as *useful* . . . in proportion to the *value* of any pleasures which it is its tendency to produce, or of any pains which it is its tendency to avert. . . .

IV. Elements or dimensions of value in regard to pleasures and pains. . . . 1. Intensity; 2. Duration . . . 3. The certainty or probability of its arrival; 4. Its proximity, propinquity, or remoteness . . . 5. Extent . . . 6. Fecundity; 7. Purity. . . .

V. Extension of the use made of the word *matter*, from the field of physics to the whole field of *psychics*, or *psychology*, including *ethics* and *politics*:—

1. In the higher, or more general quarter of them; viz. in the phrases *matter of good*, *matter of evil*.

2. In the department of *law* in general, and of *penal law* in particular, — *matter of satisfaction* or *compensation*, *matter of punishment*, *matter of reward*. . . .

3. In political economy — *matter of wealth* and its modifications; viz. the *matter of subsistence*, and the *matter of opulence* or *abundance*. . . .

VI. Good and evil of the first, second, and third orders, *i.e.* Effects similar or opposite, producible in society by the operation of one, and the same act at different stages of its progress. . . .

VII. Springs of actions, – appetites – desires – motives – interests.

VIII. Sanctions or sources of obligation and inducement . . . viz. –

1. The physical sanction. 2. The moral or popular sanction.

3. The political, including the legal sanction. 4. The religious sanction. 5. The sanction of sympathy. . . .

[A sanction is] . . . the *source* whence the pleasure and pain in question is expected to flow.

IX. Conditions requisite for the accomplishment of any object, in so far as depends upon human means:— . . . appropriate *will*, and appropriate *power*. . . .

X. Obligation and Right:— Explanation of these . . . fictitious entities . . . by showing how they are constituted by the expectation of eventual good and evil, *i.e.* of pleasures and pains, or both. . . .

XI. Proper Ends of the distributive branch of law: . . . *security*, *subsistence*, *abundance*, and *equality*.

XII. Formation of a uniform and mutually correspondent set of terms, for the several modifications of . . . the creation, extinction, and transfer of subjects of possession. . . . 1. *Collation*; 2. *Ablation*. . . .

XIII. Division of offences . . . into offences against others – *i.e.* regarded as prejudicial to others, and offences against a man's self – *i.e.* regarded as prejudicial to a man's self. Division of offences regarded as prejudicial to others, into . . . private offences . . . semi-public offences – and offences against . . . the population of the whole political state. . . . Division of offences into *positive* and *negative*. . . .

XIV. Ends of Political Economy: – These are the same as those of the distributive branch of law. Wherein, then, lies the difference? Answer: [Here, to] . . . subsistence and abundance, a more particular and direct attention is paid, than either to security or to equality.

XV. Limits applied to the quantity and productions of Industry, by the quantity of the necessary instruments. . . . These instruments are – 1. The aggregate mass of existing capital. 2. The aggregate mass of capacity for labour. . . .

APPENDIX D

Essay on Representation

[Bentham wrote this essay for the French National Assembly. It is a very free translation of the incomplete French text, 'L'Essai sur la

Représentation,' printed by Halévy in the Appendix to *La Jeunesse de Bentham*, volume I of *La Formation du Radicalisme Philosophique*.]

In order to indicate the principles which seem to me proper to consult if we are to find the answers to these important questions [of legislative representation], I shall use four great words as rallying points: Security, Equality, Liberty, Simplicity. . . . [After Bentham defined the four terms, he listed these axioms:]

I. Each man has an equal right to all the happiness that he is capable of. Or to say the same thing in other words and to evade the obscurity which is attached to the idea of right: given any assemblage of men, any independent superior being who is benevolent enough to interest himself in their condition and to find pleasure in the idea of their well-being without having any personal interest which would lead him to prefer one among them to another, will naturally find an equal pleasure in contributing to the happiness of any one among them as well as another. The happiness of any of them has no more value in his eyes than the equal happiness of any other. Nevertheless, any greater happiness obtained by any one among them has more value, in proportion to its quantity, than a lesser happiness obtained by another.

II. Lacking the power to determine the relative degree of happiness that different individuals are susceptible of, it is necessary to start with the assumption that the degree is the same for all. This assumption, if it is not exactly true, will more nearly approach the truth than any other general assumption which can be put in its place.

III. Consider a transaction that would affect the well-being of that society by producing in the collective mass the happiness of a more or less considerable number of individuals who compose it. If it were a question of equal portions of happiness, the utility of that operation would be exactly grounded on the number. Each interest to which the benefit could be extended would furnish a separate, new, and equal reason in favour of its extension. Thus an operation whose effect would be to cause ten among them to experience a similar portion of happiness would be exactly twice as valuable as a transaction which would limit the experience of that same portion to only five among them.

IV. Apart from the number of the parties involved, the utility of a transaction will be relative to the quantity of happiness which it confers. Thus an operation that would provide each party involved with two portions of happiness would be exactly twice as valuable as another whose effect was limited to providing a single similar portion.

V. Given two operations, the effect of one is to provide each of ten persons with a single portion of happiness; the effect of the other is to

provide each of five persons with two similar portions. The respective merits of the two operations are exactly equal: there is no reason to prefer one to the other. It is as valuable to take chance as an arbiter as to decide in any other way.

VI. But in the production of happiness, the quantity of the effect has not much proportion to that of the cause: a double quantity of the cause of happiness will not produce a double quantity of happiness, but much less.

Take for example the matter of wealth: which encloses within it the most considerable part of the causes of happiness – above all those which the Government finds at its disposition – which can be taken with less inconvenience than any other and ultimately without any danger of error, for the representation of all.

Different individuals have very different degrees of capacity for judging what accords with happiness. But these differences can be counted as nothing unless some sign, some proof, can be found of which the probative quality should be clear and manifest, like those which are required in judicial procedure. . . .

Each has an equal desire for happiness. Although some differences were found in this respect, these differences, not being susceptible of any proof or measure . . . [cannot be drawn up in an account]. In any case, this general proposition is found approaching closer to the truth than any other which can be put in its place.

Thus, were it only a question of the degree of desire and if the capacity of judging the tendency of an addition to happiness were in all men equal to their desire, the question of the best form of government would be a very simple affair. It would only be a matter of giving each individual in this society a vote.

But one sees even at the first glance that this assumption must, in any society whatever – as there are plenty of examples to show – fall short of quadrating with the truth.

There are several classes, and those the most numerous, to whom, as every one will agree . . . this capacity is totally lacking.

Such are: (1) Minors. All persons of both sexes under a certain age. (2) The insane who, like minors, do not have the capacity of conducting themselves as private individuals. (3) With them it is generally agreed to exclude . . . all persons of the feminine sex. Not that they are in the situation of minors and the insane, nor that they would even be found inferior in the species of capacity required, nor even in a degree capable of being measured with the other sex.

But for other reasons women are either so assigned or assignable: (1) Distraction because of other more necessary activities. (2) Necessary dependence on the other sex in the administration of the common resources. (3) Comparative difficulty of acquiring the re-

quired knowledge because of their special domestic life. (4) No need of a similar influence because of their influence through the pleasures to which the cooperation of both is necessary. (5) Dissensions, which a difference of sentiment in affairs so susceptible has of breeding, cannot fail to be born between two persons living together and equal with regard to this effect.

One thing we may remark, and that is, that these reasons do not apply with equal force to all the classes in which the sex can be distributed. Such are, for example, many widows and young unmarried women who have passed a certain age. But because the rights of women are not in question at the moment, I only mention it here as worth remembering.

The three classes therefore being separated from the inquiry for articulated and indubitable reasons, it would seem to follow that all others should be admitted unless we can find grounds for exclusion equally based on clearly pronounced and sensible indices. Let us examine those which have been proposed to this effect. Some dispute the voter's capacity for knowing what would be to his advantage; others, of his ability to act on it, supposing he had it. I begin with those of the last class, in order to clear the discussion which is likely to arise at the same instant.

What would prevent the voter from acting according to his knowledge just as he otherwise acts of his own accord? It could only be the irresistible influence of some other individual.

Let us note here that this consideration can only operate as a ground for exclusion insofar as it appears that his conduct is determined by that influence [which is] . . . either contrary to that by which it would be determined, abstraction made of that influence, or ultimately contrary to the general interest of society. This inquiry might well be a little prickly. Happily there is a consideration which suffices to render it completely useless. This is the facility offered by the ballot for shielding everyone with the utmost certainty from this influence. . . .

Note well, because it is very curious, the blindness which reigns on this subject in England. In all that has been said (and much has been said!) on this subject, the commonplaces of dependence and independence are never dropped. Yet by this simple means all such dependence can disappear altogether with certitude and at little expense. . . .

What are the advantages to be expected from equality? [It] . . . has qualities which are within the radius of all minds, which serve to recommend them to all hearts. They are so simple to grasp, they agree so well with the theory, or if one wishes, the fashion of speaking, of imprescriptible rights. This theory, though considering how obscure

and founded on the hollow base of ipse-dixitism it is, is not the less alluring.

Any unequal plan whatever, whatever were its good points otherwise, would always have this disadvantage over the equal: in order to show its utility, it requires demonstrations less capable of being presented to everybody in a successful fashion.

In the . . . case [of inequality], there always exists an imagined imperfection, if not indeed a felt imperfection. Now an always imaginary imperfection is itself a felt imperfection: for, between imagining oneself always unhappy and being always unhappy, what is the difference?

Inequality of law (of right): there is at least an inequality of dignity, inequality of consideration: inequality of that pleasure which depends upon the esteem and love of others; and is that pleasure nothing? . . .

[Bentham demands that if there must be a property qualification it should be as small as possible] . . . let us say £20 or £10 annual rent. It cannot be too small while it is yet something; particularly if the personal quality of knowing how to read is added to it. While people have something fixed to lose, there is little danger that they will imagine their interest allied to those who have nothing, or that they will call for an equal division or the destruction of all property. . . .

Whatever be the species of property which should form the qualification – things mobile, things immovable – things animated, things inanimate – entire things, parts of things, partial rights over things – it is not that which guarantees happiness; it is not that which judges. If cows and asses knew as well how to choose a protector as to feel the need for one, votes could and should be multiplied by heads of beef and asses. But in that case the votes would have to agree with the cows and the asses themselves, and not with their masters.

By what reason should the rich man be given more votes on account of his riches? It is exactly on that account that he should not have so much. The greater the riches, the greater the facility for influencing the votes of those who have less. It is rather to the possessor of a single qualifying portion, who is badly provided to influence anyone, to whom it would be necessary to grant a number of votes. . . .

Will it be said . . . that he who has more property has more interest in the prosperity and the conservation of the state than he who has less? This, I believe, has been said, or something like it. But this consideration, though it may be pertinent and valuable in other cases, where, for example, it is a question of choosing someone for an active and important post in the administration of affairs, has no application here. The only reason for it . . . is to preserve the proprietors from being plundered through the votes of the non-proprietors. But these

. . . I have already shown need not have any vote. . . . It is not on the part of their co-proprietors, however poor they be, that the rich have anything to fear. However, it is against those alone that this inequality pretends to defend them. That which is the great proprietor's all in all, is the small owner's likewise. The one is the natural ally of the other. Their sole enemy is the non-proprietor.

[Bentham concludes by outlining his plans for holding elections: direct voting, rather than in two degrees; the secret ballot; no canvassing; local elections by parishes, all held on the same day. Though he devised these suggestions for the French, he later transferred them to his new plan for British parliamentary reform. See Appendix G.]

APPENDIX E

On the Efficient Cause and Measure of Constitutional Liberty

B. 126, pp. 8ff., 1790

The true efficient cause and measure of constitutional liberty or rather security is the dependence of the possessors of efficient political power upon the originaive power, the will of the body of the people.

A spurious efficient cause and measure that has been hitherto commonly substituted to the one above mentioned is the division of the mass of political power by the allotment of different branches of it to different hands.

The security which results to the people from the former circumstance is intelligible, simple, and incontestable. No one can fail of understanding at the first word how advantageous it must be to him to be able to put a stop to any measures in which he is interested and which he does not like.

This power can not in the nature of things be possessed by *every individual*: because when one chooses that a thing should be done, and another that it should not be done, only one of them can have his will. But by the *major part* of the whole number of individuals it may be possessed, and so it ever ought to be.

How any division of power should be an efficient cause of liberty is what certainly does not appear manifest upon the first mention of it. . . .

The current theory of government, the theory from whence almost all the arguments we see relative to fundamental points in government appear to be deduced is hollow and delusive. A confused

division, an unintelligible nomenclature, and false maxims relative to the branches of power to which that nomenclature has provided names.

All power comes under one or other of two or three branches; for such is the confusion at the very outset: legislative and executive: or legislative, judicial, and executive. Judicial power is and is not a branch of executive. Thus much however is agreed, that whatever is not legislative is either executive or else judicial or executive.

So much for the division and the nomenclature. Setting to work on the foundation comes practical wisdom and lays it down . . . that [in] no two of the great branches into which power is divided can any share [be joined] . . . because the result of any such union is despotism or arbitrary power. To the smallest twig of one of those branches add the smallest twig of another and place them in the hand of the same person or the same body of men, up starts a despot or a body of despots. . . .

To know whether he was right in saying that what made arbitrary power was the union of these three branches, a man ought to have a precise idea of the distinct nature of each. But that is what has never yet been distinctly known to any body: particularly to those who maintain this doctrine. . . .

My answer is that the current theory on this head is current nonsense; contradictory to itself and universally and necessarily contradicted by practice.

That it may appear the plainer that the division of power is not the efficient cause of liberty, let me inform or rather remind the partizans of the current theory what it is: it will then be the better understood whether the division is of any use to liberty, and if so to what circumstance it owes its being so.

Government is good in proportion to the happiness of which it is productive on the part of the body of the people subject to it.

The accomplishment of good government like [that] . . . of any other object to be accomplished by human faculties depends upon the concurrence of the three requisites of intelligence, power, and inclination. Government will be good in proportion as those who stand invested with the power possess the inclination to render it so, and in addition the measure of intelligence necessary to that purpose.

The degree of inclination will be in exact proportion to the dependence of the governors on the governed: to the dependence of the persons intrusted with the power, on the persons by whose obedience the power is constituted: to the dependence of men in power on the body of the people: of those who exercise power on those on whom it is exercised. In as far as a man who has power is independent he will make use of it for his own benefit: in as far as he is dependent upon

any one he will find himself obliged to employ it for the benefit of him on whom he depends. In this there is no jargon, no obscurity. It is founded on the universal, necessary, and undisputed, and not even to be lamented property in human nature, the predominance of the self-regarding affections over the social. It is understood at once: and to him who once understands it it can not be easy to avoid assenting to it.

As far at least as inclination is concerned, according to the measure of this efficient cause of good government will be the measure of the effect. The stricter the dependence of the governors on the governed, the better will the government be, the larger and securer the measure of liberty. . . .

In comparison of inclination, intelligence is a very secondary and immaterial requisite. Where the dependence in question is wanting the inclination is sure to be wanting: and where the inclination to govern well is wanting, the more intelligence [there] . . . is on the part of the governors, the government will be but so much the worse, the farther from its proper end. . . .

Division of power may contribute by accident to the inclination of governing well. How? by tending to bring back the governors into dependence in a certain degree on the governed. From division among governors results disagreement: from disagreement, appeal: which when there is nobody else to appeal to must be to the people: and from appeal, dependence. But this is only accidental and so long as there is no disagreement there will be no appeal, consequently no dependence, and as soon as disagreement can be made up the appeal drops, and with it the dependence, at least as far as depends upon the now reconciled appellants. . . .

Division of power may contribute likewise to good government by contributing to *intelligence*: but still remotely and by accident. That discussion and debate is favourable and that in the highest degree to intelligence there can be no doubt: and in as far as division of power may happen to contribute to discussion and debate so far it may become productive of intelligence. But division of power may subsist without producing any debate: and debate and discussion are perfectly capable of existing without any division of power. . . .

According to the current language the business of determining the distribution of constitutional powers should be a mighty simple affair. All power is divided into three branches, the legislative, the executive, and the judicial. It is proved or rather taken for granted that these powers ought to be kept distinct: insomuch that whoever possesses any particle of any one ought not to be suffered to possess any particle of any other. . . .

These verbal distinctions have nothing that corresponds with them

in practice. A more material distinction than any, that between subordinate power and supreme is by no means expressed by it, and very obscurely alluded to. The separation announced by it was never realised in point of fact anywhere, nor would any advantage result from its being so. . . .

Constitutional liberty being thus dependent upon the dependence of the possessors of public power on the will of the body of the people, depends not directly upon any other circumstance: nor intermediately but in as far as such other circumstance contributes to the maintaining of that dependence.

It depends not therefore upon the distribution of the general mass of power among three or any other number of bodies: nor upon its division into three or any other number of branches. . . .

In opposition to this theory which is not more at variance with reason than it is with practice and with itself the propositions I lay down are these.

1. That the efficient cause of constitutional liberty or of good government which is but another name for the same thing is not the division of power among the different classes of men intrusted with it, but the dependence, immediate or mediate, direct or indirect of all of them on the body of the people.

2. That the whole sovereign power ought to rest in the hands of persons placed and displaceable by the body of the people.

3. That in this sovereign power is essentially comprised that of making laws in all cases, that of judging in dernier resort whether they have been disobeyed in any instance, and that of providing for their being executed upon those by whom they have been disobeyed: and therefore in so far judicial power and executive.

4. That in a state of any considerable extent it is altogether inexpedient and next to impossible that this sovereign power should engross to itself the whole business of legislation; that it ought to distribute a considerable share of that business to local legislatures enacting laws in certain cases without the express consent of the sovereign power but liable in all ways imaginable to its control.

Legislative power and supreme power though so frequently used as convertible terms are altogether different and disparate. Subordination in legislative is just as frequent and just as intelligible as in judicial. What has occasioned the confusion is that the same hands which held the supreme legislative power have in spite of system held at the same time the supreme judicial.

5. That under a well ordered Constitution, no one person under the name of King, or any other nor any body of persons unaccountable to the body of the people ought to have any efficient share in legislation: but that a nominal share the utmost effect of which . . . is the

preferring an appeal from one set of deputies chosen by the people to a succeeding set of deputies chosen in like manner, may do some good and can do no harm.

6. That there can be no sort of use, but on the contrary can not but be harm in the King's having any thing whatever to do in judicature: whether in the giving direction to the exercise of that power or in the appointment of the persons by whom it shall be exercised.

7. That there can be no sort of use, but on the contrary cannot but be harm in the King's having any thing to do with any power than can properly be termed executive: for that executive if it means any thing means the power of providing for the execution of the laws *upon* those who fail in their obedience to them: and that this power is a necessary appendage to or more properly the essential substance of all that is really power in the functions of judicature.

8. That under a well-ordered constitution and in a state of considerable extent it is advantageous and not hurtful that the whole military force in all its branches, the whole of that force which is destined to act against a foreign enemy, should be at the disposal of some one person who may as well be called by the name of *King* as any other. And the power thus vested, inasmuch as it consists in the administering of so much of the public property as is destined to that use may in so far be termed administrative.

9. That it is in many respects highly advantageous, and in no respect eminently hurtful that this office should be hereditary, and the person invested with it irremovable and unaccountable as to everything done in virtue of his office.

10. But that no act done by this person in virtue of his office should be valid, but with the concurrence of at least some one other person who shall be accountable for it, and who may be and ought to be placeable and displaceable at the pleasure of the principal.

APPENDIX F

On the Influence of the Administrative Power over the Legislative

B. 126, pp. 1ff., 1790

I come now to . . . the topic of influence: or as men are apt to term it as often as they feel themselves disposed to disapprove of its existence in any instance, corruption or corruptive influence. . . .

The notions prevailing in Great Britain relative to this topic may be reduced to these four . . . following modifications.

1. That the King ought to have no means whatever of influencing Parliament which it is possible to keep out of his hands.
2. That he ought to have some, but less than he has at present.
3. That he ought to have exactly as much as he has at present, neither more nor less.
4. That he ought to have more than at present.

The result of my inquiry is most clearly and decidedly in favour of the first of these opinions. This is accordingly to the proof of which I shall here apply myself, and if I succeed in that the erroneousness of all the others will follow of course as a necessary consequence.

Influence is an effect resulting from the indirect exercise of power when applied to the accomplishment of an object different from and collateral to that which is the direct and obvious end of its institution. Influence is the result produced by power applied indirectly and to a purpose collateral to the end of its institution.

In speaking of influence, I find it necessary . . . to distinguish between the only species I mean to combat as pernicious and another species which I regard as equally salutary and inescapable . . . By the former I mean the influence of will over will: by the latter the influence of understanding over understanding.*

The expedience of suffering a man's understanding and thence his will to be influenced by the understanding of another assumes the judgment manifested to be called forth by the pursuit of the same interest or at least of an interest not at variance with that of the [consulter]. . . .

Unavoidable as is this species of influence, it is scarcely to be wished that it were otherwise. He who feels himself either incapable or unwilling to think for himself in relation to affairs in which he is called upon or admitted to take a part, must necessarily commit or give up that task to others. These others will naturally be such as to his eyes appear as better qualified than himself. It is equally natural that in a business like this he should in general think right. Public reputation is the guide which in such matters if left free to follow the dictates of his understanding, he will naturally consult in preference. This, indeed, it is true, like every other human guide is liable to

* For distinction's sake I would gladly use instead of the former some such appellation as corruption, corruptive or seductive influence: and so I should were it not the choice of a name which stands already branded with a note of reprobation involves a begging of the question: an artifice of unfairness which discernment ought to teach us to detest and which conscious strength ought to dispose us to disdain. It might even seem to imply that there might be instances where the influence of will had no such pernicious tendency, a proposition which the following argument undertakes to disprove.

prove a fallacious one. But it is at all times the least so of any that can be pointed out. Imposters it is true . . . are at least as liable to start up in the line of politics as in any other. But in this as in every other the experience of one imposter shuts the door closer and closer against succeeding ones.* . . .

Where the influence of understanding over understanding stands single or the rival influence of will over will stands suspended by the operation [of] particular causes literary merit display'd in the line of political discussion has been shewn by experience to prove a very successful title to public confidence. Indeed how can it be learnt that a man has been occupying himself with success in the study of the public interest unless it has been made known, and how can his labours in that or any line be so effectually made known as by the publication of the works which are the fruits of them? In France for example the names of Bailly, Mirabeau, Turgot, Sieyès, and so many others as might be added to them, are sufficient to shew with what force this species of influence has exerted itself where cleared from the incumbrance of its sordid rival, and to how good a purpose. . . .

Thus it is that the influence of understanding over understanding is favourable to felicity of choice. Where this prevails the mass of mankind considered in their political capacity, of citizens exerting in the capacity of electors or otherwise an influence over the conduct of political affairs, thus naturally resolve themselves into two classes. The first, composed of the privileged few contains those who are in the habit of forming a judgment of their own on the questions that come before them: the other of those who judge as it were by proxy shaping their conduct by the judgment of others, of whose judgment on whatever grounds they [entertain] . . . a favourable opinion. In following upon this occasion public fame they do not only naturally but well. Public fame is the voice of the multitude. . . .

If all men ranged themselves under one or other of these two classes, every thing would be as it ought to be, as it were to be wished it should be. Political affairs would be conducted upon the best footing on which

* In a country arrived to such a pitch of civilization and intelligence as Great Britain it will be difficult to find any tolerably recent instance within the memory of any man now living where the people have sustained any real injury by any imposter of this class. Neither Oates nor even Sacheverel are at all likely ever to find a successor. . . . The question of social affection, of inward integrity . . . is happily in instances [of supposed self-serving] . . . of no sort of consequence. So long as the people are served, what matters . . . the principle that prompted a man . . . ? Where an individual in the capacity of informer or . . . Judge . . . contributes to the execution of a salutary law, who can know and who need care whether it were public spirit or private enmity or the prospect of gain or any one of a thousand accidental motives that might be mentioned contributed the greatest share towards engaging him in the service?

it is possible they could be conducted consistently with the incurable imperfections attached to human nature.

But the influence of will on will comes upon the stage, and now the scene undergoes a material change and altogether for the worse.

When a man acts according to the dictates of his own will guided by the guidance of his own understanding he acts in favour of what appears to him to be most for his advantage. He is by the supposition at liberty so to do, the principle of self-love universally implanted and reigning with an undisputed sway in human nature disposes him so to do, and while all men are at liberty to take their part it is not to be wished for the sake of the species that it were otherwise.

When he acts according to the dictates of the will of another it is as natural to presume he does not so much as act according to what appears to him to be most for his advantage. If he did, he would by the supposition act according to the dictates of his own will, which by the supposition he does not do. As my will is necessarily governed in preference by the prospect of my advantage so is your will by the prospect of your advantage: if therefore in opposition to the dictates of my own will I follow those of yours, my interest is sacrificed to yours.

If I conform to your will only because it is conformable to mine the case does not come within the supposition: it is then only your understanding that I conform myself to take for my guide. The influence of will on will necessarily supposes the sacrifice of one man's interest of what that man supposes at least to be his interest to that of another.

Will can only be acted on by motives. The possible motives by which a man's will can be acted upon are all for this purpose in this point of view resolvable into two sorts or classes . . . coercive and attractive. . . . To the first class belongs the fear of punishments and hardships of all kinds: to the other, the hope of what is good and desirable in life.

So long as the motives used to influence will are of the attractive kind only, there is no sacrifice of interests as between the parties concerned, there is no harm done. My will after having been in this way modified by yours remains as truly my will as it was before. No clear sacrifice is made by me. If I have given up to you what appears to me an advantage it is only because I have received one which appears to me a greater. . . .

To every application to the force of the motives of the coercive class, in more familiar language to every exercise of that species of power which is spoken of in contradistinction to influence . . . there may in the nature of things, and accordingly under the British Constitution, actually is opposed a check of a political nature, viz. the responsibility of the person invested with that power. The King who alone is irresponsible is allowed no share worth considering in

it; and neither judges nor any other persons who are admitted to the possession are left irresponsible.

With that species of political power which goes by the name of influence the case is widely different. It is the particular character of this branch of power to be either in no degree or in a very imperfect degree subject to responsibility with respect to the use . . . it is put to. Acts of kindness you may do to every man: consequently to any man of your choice. You may do them without condition: a fortiori upon such conditions as you and he can agree on. The agreement, whatever it be, may, it is true, be proscribed by law: if discovered it may be punished: and you and he are therefore thus far comprised within the sphere of responsibility. But when there are but two parties concerned, and they both interested in concealment, how difficult is discovery? And a condition may be understood without being expressed, and as perfectly understood and punctually observed on both sides as if it were: and how can that be discovered which in any punishable form never had existence?

The case is the same with that species of influence which though equally constituted . . . by the faculty of disposing of the objects of desire is nevertheless in its operation of a coercive nature. I mean that which consists in the faculty of withdrawing objects of that class whether they have been originally conferred by the possessor of this species of influence himself or by any other person. . . .

Whoever in conferring a benefit subjects the duration of it to such contingency reserves to himself a power which though it come not within the description ordinarily annexed to what is termed the power of punishment, may possess an influence altogether as coercive and efficacious. In this way it is that one and the same object may and does furnish to any person who has the faculty of disposing of it an influence merely of the attractive kind or one of the coercive kind according to the relation borne by the period at which the object is considered as being in possession to that at which the influence is considered as being exercised. If the object has not yet been in possession, the only influence which the disposal of it can confer is merely of the attractive kind: if it be already in possession at that period, the influence of attraction is at an end, but is converted into a stronger sort, that of the coercive kind.

These considerations briefly stated as they are, may serve in a general way to shew that the executive Magistrate who for his situation is not dependent upon the pleasure of the people ought not to be entrusted with any influence which consistently with the discharge of his necessary functions of his office can be withheld from him.

APPENDIX G

Parliamentary Reform

B. 127, pp. 6ff., 1790

[These fragments of a major projected essay are in the characteristic Bentham medical manner – first the evils, then the remedies; criticism, then construction.]

The design of the ensuing sheets is to propose a change in the forms and modes of proceeding of the National Representation of Great Britain.

Every man who proposes a change in the state of any part of the law may be expected to produce his reasons. The reasons in behalf of the change I here submit to the public consist in the inconveniences of the present system. I shall begin with the examination of these inconveniences. I shall next propose the remedies, and vindicate them from every charge . . . to which they may appear exposed.

Good and bad are epithets of comparison, and become proper or improper as the object of the comparison is changed.

The British Constitution, though good in comparison of absolute monarchy, or absolute aristocracy is perhaps equally bad in comparison of a well-organized commonwealth.

1. The right of election to the sovereign body is confined to a small part of the whole body of the citizens. . . .

2. The select few are chosen on account of their property: an immoral preference whereby the inevitable measure of inequality is aggravated and the seductive power of wealth strengthened.

3. Absurd and irrational preferences are given to one species of wealth over another. Though wealth is the only test of fitness, a million of money is looked upon as nothing: and thousands a year in land amounts to no more unless the land happens to come under the name of freehold. Though wealth is the only test of fitness men overflowing in wealth are rejected while beggars are received.

4. The inequality between the electoral districts is enormous. One man has an entire nomination to himself: another has not the 10,000th part of a nomination.

5. The local extent of many of the districts is enormous. A man can not exercise his right but at such an expence of money and time as renders the exercise of it impracticable to a great number. The enormous crowds thus collected generate confusion, protract the business and give rise to quarrels and tumults. . . .

Election – its inconveniences

Mischiefs to individuals

I. On the part of the Electors

1. Drunkenness occasioned by party meetings. Remedy: Voting by ballot all in one day in each Parish.
2. Riots occasioned by the conflict of parties. Remedy: Voting by ballot.
3. Expence of travelling on the part of such Electors as have to come from a distance. [Remedy:] Voting each in his own Parish.
4. Loss of time by party meetings, canvassing and disputation. Remedy: Voting in Parishes all in one day, voting by ballot.

II. On the part of the Candidates

1. Expence of canvassing: i.e. of travelling to canvass. Remedies: Small districts, canvassing prohibited.
2. Loss of time in canvassing. Remedies: As above.
3. Expence of conveying such voters as would not defray their own expence. Remedy: Voting each in his parish.
4. Expences of entertainment. Remedy: Voting by ballot.
5. Expences coming under the head of bribery. Remedy: Voting by ballot.
6. Expences of Election. Causes before Parliament. Remedy: Certainty and simplicity of the mode of ascertaining the qualification. Entry upon the parish Register-book.
7. Expences of Election. Causes in the Common Law Courts. Remedy: As above.

III. To the general morals of the people

1. Habit and example of drunkenness. [Remedy:] Voting by ballot.
2. Habit and example of idleness. [Remedy:] Voting by ballot.
3. Habit and example of lying to the prejudice or advantage of the candidates and their respective partizans. Remedy: Shortness of Parliaments.
4. Divisions created in families and among neighbours. Remedy: Voting by ballot.

IV. Denial of Election rights

1. To the citizens at present excluded from being electors. Remedy: Universal admission of all who can read.
2. To persons excluded from being eligible. Cause 1. Exaction of

pecuniary qualifications. Remedy: Abolishing of pecuniary qualifications. Cause 2. Expence of standing. Remedies: 1. Voting by ballot. 2. Voting each man in his own Parish.

V. Mischiefs to the service. Choice of members unfit through:

1. Habits of idleness and dissipation. Remedy: Obligation to attendance. Frequent re-election. Short duration of the term.
2. Avocations. Remedy: As above.
3. Want of talent. Remedies: 1. Obligation to attendance. 2. Election upon a free and extended plan. 3. Frequency of election. Short duration of the term.
4. Want of probity. Remedies: 1. Election upon a free and extended plan. 2. Frequency of election.

Causes through the influence of which a choice of unfit persons may ensue:

1. Choice at the hands of the servants of the Crown. Remedies: 1. Right of election extended. 2. Voting by ballot.
2. Choice in the hands of a few who name their own particular connections without regard to fitness or sell their votes. Remedy: Right of Election extended and free.
3. Surprize effected by personal solicitation. Remedy: Prohibition of canvassing. . . . Thus long and heavy is the catalogue of inconveniences. Of these some have hitherto been unnoticed, others passed comparatively without notice. Those on which the greatest stress has been laid are the fewness of the persons on which the right of election is vested in some instances, and the situation which is thought to expose them to undue influence. . . .

Equality in respect of this branch of government is free from the objection which is so fatal to quality in matters of property. Equality in property is destructive of the very principle of subsistence: it cuts up society by the roots. Nobody would labour if no one were secure of the fruits of his labour. Equality in respect of the rights of voting is attended with no such inconvenience. Push it to the utmost, the motives for labour remain still the same.

Mischief – Bribery

Bribery – This is no mischief of itself – if it be a mischief, it is in consequence of the tendency it has to produce effects which in themselves are mischievous.

It is a proof and measure of the fondness the candidate has for the office. If the office has any thing of duty belonging to it it would thus far be a presumption in favour of his fitness for it. If the money given

were given to a public fund in case of the public burthens, it would in that respect too be an advantage. But these cases are both hypothetical.

1. It adds weight to the yoke of the aristocracy of the rich: and by that means tends in this as in all other instances . . . to strengthen the natural monopoly which so many causes concur to establish in favour of [wealthy] men . . . to the prejudice of those who are more likely to be fit for it; a monopoly of this power in hands which, so far from being the most likely, are the least likely to be fit for it.

2. It acts in opposition to the influence of understanding; that influence on which the liberty of action in the discharge of public trusts as well as the propriety of their exercise so essentially depends.

3. It tends to injure the public morals by propagating the habit of sacrificing integrity and . . . duty to the snares offered by avarice.

4. It tends to injure morals in another way by encreasing as it were the value of money, and adding to the temptations already too strong which it . . . spread[s] for the probity of mankind. . . . But if money is necessary to every thing, money swallows up every thing; all men of any talent are set a scrambling for it and nothing however is too bad to be done in order to get it. If honour is to be had no otherwise than by & through money, what is it, how dishonourable soever, that a man will hesitate to do in order to get it? . . . Power, dignity, and consideration[s] . . . separate from money add to the number of the prizes in the lottery. . . .

It tends therefore to injure the service in two ways.

1. By throwing power exclusively into the hands of the wealthy, a class of men whose indolence and ignorance renders them essentially unfit to exercise it.

2. By offering to the preference of each elector a person who is not . . . in his own judgment or that of those whom he takes for his guides . . . the fittest.

Bribery is not so bad as the influence of wealth without bribery. . . .

Instances of violation of constitutional principle in the mode of representation classes as they rise one above the other in the scale of malignity.

1. Property seats in the hands of Peers.

2. Property seats in the hands of commoners. Natural interest seats.

3. Seats in venal aristocratical Boroughs.

4. Seats in venal democratical Boroughs.

The case of least evil is that of a property seat in the hands of a Peer. In venal democratical Boroughs you have the mischief of bribery in perfection. There is most of it, and what there is of it is more public in proportion to the number of the electors. In the same proportion

the corruption spreads wider and wider and the bad example becomes more and more contagious. The more numerous the partners in guilt, the lighter the load of infamy to each, till at last all sense of shame is obliterated, and the very idea of honour and public spirit is become ridiculous.

In venal aristocratical Boroughs the mischief is of the same nature though less in degree. There is less of it, and what there is is more covert. Decency is not thrown off. Profligacy does not rear a triumphant head.

In both these cases success is about equally independent of merit. In democratical boroughs, what passes for merit has a better chance to be attended to: because in these instances bribery seldom if ever acts alone. Friends are gained by affection and solicitation . . . numbers are determined, adversaries brought over by bribes. . . .

The mischief of natural interest pocket Boroughs is that by . . . present unpopularity or other accidents they are liable from time to time to emerge from that condition to invite strangers or competitors . . . [who] produce contests, and thence the complicated mischief of contested elections, and to degenerate into the condition of a venal Borough aristocratical or democratical. . . .

In the case of a single proprietary seat the best thing that can happen is that it should be in the hands of a Peer. Why? Because if it be in the hands of a commoner he will sit in it of himself and sit in it for ever-lasting. As a possession of this nature is seldom unaccompanied with other possessions more immediately productive, it will by that means be entailed as it were upon a man in whom the seeds of industry and ability have been destroyed by opulence.

In regard to the Peer the happiness is that he can not sit in it himself: this lets in a possibility of his pitching upon a man of real merit and fitness to supply his place. True it is that the man stands last in an almost endless line of competitors. There must be no younger brother in his way, no son, grandson, or nephew: no bosom friend whose degree of intimacy excludes altogether all necessity of merit: . . . no necessary minister to secret pleasures: no choice spirit whose convivial talents render his presence indispensable at table: no man of humble pretensions and pliancy proportionable [that] . . . render the protege the express image and *alter idem* of his noble patron. It is to a combination of ingredients thus extraordinary that the service owes the being blessed or cursed, happy do I feel myself not to be obliged to cast up the account and draw the balance (difficult indeed I should find it to say which) of the matchless talents of Edmund Burke, the representative of the Rockingham interest in the House.

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